Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Schulz, David
david.schulz@yale.edu
917-733-9014

Chua, Amy
amy.chua@yale.edu
(203) 432-8715

Hathaway, Oona
oona.hathaway@yale.edu
203-436-8969

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Raquel Leslie
34 Mechanic Street
New Haven, CT 06511
(978) 766-4872

June 12, 2023

Hon. John Walker, Jr.
Senior Judge
U.S. Court of Appeals for the Second Circuit
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I am a rising third-year student at Yale Law School and wish to apply for a clerkship in your Honor's chambers for the 2025-2026 term. My family first immigrated to Connecticut from Ecuador, and as a YLS student, I would be delighted to return to New Haven to clerk in your Honor's chambers.

Prior to law school, I gained substantive experience distilling complex fact patterns, drafting motions and legal memoranda, and preparing witnesses for trial as a legal analyst at Kobre & Kim LLP. I have taken the opportunity to further develop my legal research and writing skills while at Yale. As the Executive Editor for Notes & Comments on the *Yale Law Journal*, I rigorously assess scholarship and improve the quality of its argumentation. I also participated in moot court, drafted sections of briefs in public corruption and violent and organized crime cases while interning at the U.S. Attorney's Office for the Southern District of New York, and wrote major portions of a brief submitted by my clinic to the Fifth Circuit regarding a constitutional challenge to a Texas law regulating drone photojournalism. I believe these experiences have prepared me well for a clerkship in your Honor's chambers.

My resume, transcripts, writing sample, and reference list are enclosed. Letters of recommendation will be forthcoming from Professors Amy Chua and Oona Hathaway, as well as David Schulz, the Co-Director of the Media Freedom and Information Access Clinic at Yale.

Thank you for your consideration. I would welcome the opportunity to interview with you and look forward to hearing from you.

Sincerely,

Raquel Leslie

Raquel Leslie

Enclosures

RAQUEL LESLIE

34 Mechanic Street, New Haven, CT 06511 ♦ raquel.leslie@yale.edu ♦ (978) 766-4872

EDUCATION

YALE LAW SCHOOL New Haven, CT
J.D. Candidate *Expected June 2024*
Honors: *Yale Law Journal* (Executive Editor, Notes & Comments); Morris Tyler Moot Court of Appeals (highest quintile score on preliminary brief)
Activities: Coker Fellow in Contract Law (Professor Sarath Sanga); Paul Tsai China Center (Co-Student Director); Latinx Law Students Association (Academics Chair); *Yale Journal of International Law* (Submissions Editor); National Security Group (Vice President); Media Freedom and Information Access Clinic; Herbert J. Hansell Student Fellow; Knight First Amendment Institute Scholar

HARVARD UNIVERSITY Cambridge, MA
B.A. in Government and East Asian Studies, Language Citation in Mandarin Chinese *May 2019*
Honors: *magna cum laude* with highest honors; John Harvard Scholar (top 5% of class); Philo Sherman Bennett Prize (best essay on principles of free government); Philippe Wamba Prize (most outstanding senior thesis concerning Africa)
Activities: Harvard Model Congress (President); Camp Kesem (Treasurer, Chair of National Transitions); Harvard Institute of Politics Citizenship Tutoring (Tutor, Chair of Advocacy Committee)
Thesis: *Towards the "China Model" of Development: Party System Stability and Perceptions of China in Ethiopia and Kenya*

PROFESSIONAL EXPERIENCE

DEBEVOISE & PLIMPTON LLP New York, NY
Summer Associate, Litigation Department (White Collar & International Dispute Resolution Groups) *May – July 2023*

U.S. ATTORNEY'S OFFICE, SOUTHERN DISTRICT OF NEW YORK New York, NY
Legal Intern, Public Corruption & Violent and Organized Crime Units *May – July 2022*
- Researched and drafted sections of briefs in opposition to a motion for suppression in a drug conspiracy trial, in support of the Government's motions *in limine* related to a multi-year scheme to defraud a law enforcement union's annuity fund, and in opposition to a motion for bail pending appeal in the Second Circuit
- Wrote legal memoranda on the standard for official acts under 18 U.S.C. § 201, admissible evidence under the Speech or Debate Clause, redacting co-defendant statements under *Bruton*, and waiving Rule 401 protections for proffer statements
- Reviewed and analyzed evidence in preparation for a *Fatico* hearing, murder trial, and human smuggling investigation

KOBRE & KIM LLP San Francisco, CA
Legal Analyst *June 2019 – July 2021*
- Assisted in the preparation of affidavits, motions for summary judgment, expert testimony, and the opening statement at trial in an ongoing trade secret theft dispute before the International Trade Commission
- Coordinated a grand jury subpoena response, conducted legal research, and prepared key talking points for several attorney proffers in the representation of a defendant in a high-profile federal investigation into public corruption in San Francisco city government
- Executed a pro bono outreach strategy to congressional offices, government agencies, and social media companies to urge the federal government to investigate the murder of a U.S. citizen and journalist in Turkey in September 2017

DEFENSE INTELLIGENCE AGENCY Arlington, VA
Human Intelligence Action Officer, Joint Staff J2X (Counterintelligence and Human Intelligence) *May – August 2018*
- Analyzed foreign intelligence threat assessments, operations and intelligence planning, and posturing towards foreign entities in order to prepare a coordinated human intelligence (HUMINT) strategy against DoD adversaries
- Contributed to the formulation of a synchronized and integrated counterintelligence plan in support of DoD Operational Plans to enable a global effort to disrupt, exploit, and neutralize foreign intelligence actors
- Authored and presented a white paper illustrating the HUMINT support provided to the DoD in its efforts vis-à-vis China

SKILLS & INTERESTS

Skills: Proficient in Spanish and conversant in Mandarin Chinese; TS/SCI Security Clearance last active in August 2018
Interests: Visiting national parks, Camp Kesem, Ecuadorian cooking, alpine skiing

RAQUEL LESLIE

34 Mechanic Street, New Haven, CT 06511
(978) 766-4872
raquel.leslie@yale.edu

RECOMMENDATION WRITERS

Professor Amy Chua
John M. Duff, Jr. Professor of Law
Yale Law School
127 Wall Street, Room 321
New Haven, CT 06511
(203) 668-6682
amy.chua@yale.edu

Professor for Advanced Contracts course and International Business Transactions course

Professor Oona A. Hathaway
Gerard C. and Bernice Latrobe Smith Professor of International Law
Yale Law School
127 Wall Street, Room 331
New Haven, CT 06511
(203) 436-8969
oona.hathaway@yale.edu

Professor for International Law course and Foreign Relations and International Law in Practice course

David A. Schulz, Esq.
Co-Director of the Media Freedom and Information Access Clinic, Floyd Abrams Lecturer in Law, and Senior Research Scholar in Law
Yale Law School
127 Wall Street, Room 432A
New Haven, CT 06511
(203) 436-5827
david.schulz@yale.edu

Supervisor for Media Freedom and Information Access Clinic

ADDITIONAL REFERENCES

Emily A. Johnson, Esq.
Assistant U.S. Attorney
U.S. Attorney's Office for the Southern District of New York
1 St. Andrew's Plaza
New York, NY 10007
(917) 882-3576
emily.johnson@usdoj.gov

Supervisor during 1L summer internship

Hartley M.K. West, Esq.
Partner
Dechert LLP
1 Bush Street, Suite 1600
San Francisco, CA 94104
(415) 262-4511
hartley.west@dechert.com

Supervisor at Kobre & Kim LLP

YALE LAW SCHOOL
Office of the Registrar

TRANSCRIPT RECORD

YALE UNIVERSITY

Date Issued: 31

Record of: Raquel Adriana Leslie
Issued To: Raquel Leslie
Parchment DocumentID: TWBPFL2K

Page: 1

Date Entered: Fall 2021

Candidate for : Juris Doctor MAY-2024

SUBJ	NO.	COURSE TITLE	UNITS	GRD	INSTRUCTOR
Fall 2021					
LAW	10001	Constitutional Law I: Group 4	4.00	CR	P. Kahn
LAW	11001	Contracts I: Section A	4.00	CR	S. Carter
LAW	12001	Procedure I: Section B	4.00	CR	J. Suk
LAW	14001	Criminal Law & Admin I: Sect C	4.00	CR	J. Whitman
		Term Units 16.00 Cum Units 16.00			
Spring 2022					
LAW	21150	The Future of Human Rights	2.00	CR	P. Gewirtz, N. Becquelin
LAW	21277	Evidence	4.00	H	S. Carter
LAW	21763	International Law	4.00	H	O. Hathaway
		Supervised Analytic Writing			
LAW	30175	MediaFreedm&InfoAccessClinic	4.00	H	D. Schulz, M. Linhorst, S. Shapiro, D. Dinielli, S. Baron, N. Guggenberger, J. Borg, J. Balkin, S. Stich
		Term Units 14.00 Cum Units 30.00			
Fall 2022					
LAW	20219	Business Organizations	4.00	H	J. Macey
LAW	20530	Advanced Contracts: Seminar	2.00	H	A. Chua
LAW	20557	Torts and Regulation	3.00	P	D. Kysar
LAW	20681	USChinaDiplomacy:PolicyStratgy	2.00	H	P. Gewirtz, S. Thornton
LAW	30175	MediaFreedm&InfoAccessClinic	4.00	H	D. Schulz, R. Davidson, K. Eberly, S. Baron, J. Borg, D. Dinielli, J. Balkin, S. Stich
		Term Units 15.00 Cum Units 45.00			
Spring 2023					
LAW	21144	Education Law	3.00	P	J. Driver
LAW	21209	International Business Trans.	4.00	H	A. Chua
LAW	21601	Administrative Law	4.00	H	N. Parrillo
LAW	21787	ForRelationsIntlLaw inPractice	4.00	H	O. Hathaway
		Substantial Paper			
LAW	30176	Advanced MFIA Clinic	1.00	H	D. Schulz, S. Shapiro, S. Stich, D. Bralow, J. Borg, D. Dinielli, K. Eberly, R. Davidson, S. Baron
		Term Units 16.00 Cum Units 61.00			

********** END OF TRANSCRIPT **********

LEG. SCHOL. YALENS. NOVPORT. ANN. DOM. MDCCCXXIV. CONDIT. VERITAS ET LUX

HEATHER ABBOTT, REGISTRAR

Official transcript only if registrar's signature, embossed university seal and date are affixed.

YALE LAW SCHOOL
P.O. Box 208215
New Haven, CT 06520

EXPLANATION OF GRADING SYSTEM

Beginning September 2015 to date

HONORS	Performance in the course demonstrates superior mastery of the subject.
PASS	Successful performance in the course.
LOW **P**ASS	Performance in the course is below the level that on average is required for the award of a degree.
CREDIT	The course has been completed satisfactorily without further specification of level of performance. All first-term required courses are offered only on a credit-fail basis. Certain advanced courses are offered only on a credit-fail basis.
FAILURE	No credit is given for the course.
CRG	Credit for work completed at another school as part of an approved joint-degree program; counts toward the graded unit requirement.
RC	Requirement completed; indicates J.D. participation in Moot Court or Barrister's Union.
T	Ungraded transfer credit for work done at another law school.
TG	Transfer credit for work completed at another law school; counts toward graded unit requirement.
EXT	In-progress work for which an extension has been approved.
INC	Late work for which no extension has been approved.
NCR	No credit given because of late withdrawal from course or other reason noted in term comments.

Our current grading system does not allow the computation of grade point averages. Individual class rank is not computed. There is no required curve for grades in Yale Law School classes.

Classes matriculating September 1968 through September 1986 must have successfully completed 81 semester hours of credit for the J.D. (Juris Doctor) degree. Classes matriculating September 1987 through September 2004 must have successfully completed 82 credits for the J.D. degree. Classes matriculating September 2005 to date must have successfully completed 83 credits for the J.D. degree. A student must have completed 24 semester hours for the LL.M. (Master of Laws) degree and 27 semester hours for the M.S.L. (Master of Studies in Law) degree. The J.S.D. (Doctor of the Science of Law) degree is awarded upon approval of a thesis that is a substantial contribution to legal scholarship.

For Classes Matriculating 1843 through September 1950

80 through 100 = Excellent
73 through 79 = Good
65 through 72 = Satisfactory
55 through 64 = Lowest passing grade
0 through 54 = Failure

To graduate, a student must have attained a weighted grade of at least 65.

For Classes Matriculating September 1951 through September 1955

E = Excellent
G = Good
S = Satisfactory
F = Failure

To graduate, a student must have attained a weighted grade of at least Satisfactory.

For Classes Matriculating September 1956 through September 1958

A = Excellent
B = Superior
C = Satisfactory
D = Lowest passing grade
F = Failure

To graduate, a student must have attained a weighted grade of at least D.

From September 1959 through June 1968

A = Excellent
B+
B = Degrees of Superior
C+
C = Degrees of Satisfactory
C-
D = Lowest passing grade
F = Failure

To graduate a student must have attained a weighted grade of at least D.

From September 1968 through June 2015

H = Work done in this course is significantly superior to the average level of performance in the School.
P = Successful performance of the work in the course.
LP = Work done in the course is below the level of performance which on the average is required for the award of a degree.

CR = Grade which indicates that the course has been completed satisfactorily without further specification of level of performance. All first-term required courses are offered only on a credit-fail basis. Certain advanced courses offered only on a credit-fail basis.
F = No credit is given for the course.

RC = Requirement completed; indicates J.D. participation in Moot Court or Barrister's Union.
EXT = In-progress work for which an extension has been approved.
INC = Late work for which no extension has been approved.
NCR = No credit given for late withdrawal from course or for reasons noted in term comments.

CRG = Credit for work completed at another school as part of an approved joint-degree program; counts toward the graded unit requirement.
T = Ungraded transfer credit for work done at another law school.
TG = Transfer credit for work completed at another law school; counts toward graded unit requirement.
*Provisional grade.

Harvard University

Cambridge, Massachusetts 02138

Harvard College

Leslie, Raquel Adriana
Admitted in 2015
Good Academic Standing

Dunster House
HUID: **60983305**

Degrees Awarded

Degree: Bachelor of Arts
Date Conferred: 05/30/2019
College Honors: Magna Cum Laude with Highest Honors in Field
Dept Honors: Recommended for Highest Honors

Academic Program

Joint Concentration: Government
Joint Concentration: East Asian Studies
Language Citation: Chinese

Beginning of Harvard College Record

2015 Fall

Course	Description	Earned	Grade
CHNSE BA	Elementary Modern Chinese	4.000	A
ECON 10A	Principles of Economics	4.000	B
GOV 20	Foundations of Comparative Politics	4.000	A
SOCWORLD 12	China	4.000	A-

2016 Spring

Course	Description	Earned	Grade
CHNSE BB	Elementary Modern Chinese	4.000	A
ECON 10B	Principles of Economics	4.000	B+
EXPOS 20	Expository Writing 20	4.000	A-
Course Topic:	Democracy in the Digital Age		
GOV 40	International Conflict and Cooperation	4.000	B+

2016 Fall

Course	Description	Earned	Grade
CHNSE 120A	Intermediate Modern Chinese	4.000	A
EASTD 121	Global Cities in East Asia	4.000	A
GOV 94YM	The Politics of Climate Change	4.000	A
PSY 15	Social Psychology	4.000	A

2017 Spring

Course	Description	Earned	Grade
CHNSE 120B	Intermediate Modern Chinese	4.000	A
CULTBLF 19	Understanding Islam and Contemporary Muslim Societies	4.000	A
GOV 50	Introduction to Political Science Research Methods	4.000	A-
GOV 97	Tutorial - Sophomore Year	4.000	A

Term Honor: Harvard College Scholar

2017 Fall

Course	Description	Earned	Grade
CHNSE 130A	Pre-Advanced Modern Chinese	4.000	A
EASTD 98D	Junior Tutorial--The Political Economy of Modern China	4.000	A
GOV 94IA	Sino-US Relations in an Era of Rising Chinese Power	4.000	A
SCIPHUNV 20	What is Life? From Quarks to Consciousness	4.000	A

2018 Spring

Course	Description	Earned	Grade
CHNSE 130B	Pre-Advanced Modern Chinese	4.000	A
EASTD 97AB	Introduction to the Study of East Asia: Issues and Methods	4.000	A
GOV 94CM	International Law and International Organizations	4.000	A
GOV 1011	Survey Research Practicum	4.000	A

Term Honor: John Harvard Scholar

2018 Fall

Course	Description	Earned	Grade
ETHRSON 12	Political Justice and Political Trials	4.000	A
GOV 94PI	Politics of Development in Africa	4.000	A
GOV 99R	Tutorial - Senior Year	4.000	SAT
GOV 1368	The Politics of American Education	4.000	A

2019 Spring

Course	Description	Earned	Grade
DEV 332	Convergence and Divergence After World War II: The Economic Performance of Developing Countries	4.000	A-
Notation:	Include in Credit & GPA		
GOV 99R	Tutorial - Senior Year	4.000	SAT
GOV 1038	Dissent and Disobedience in Democracies	4.000	A-
SPANSH 59H	Spanish for Latino Students II: Connecting with Communities	4.000	A

Harvard College Career Totals

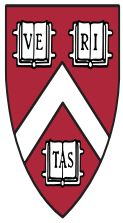
Cum GPA: **3.867** **Cum Totals** **128.000** **120.000**

End of Record

Erika J. McDonald, Registrar
Not official unless signed

Date Issued: 06/08/2023
Page 1 of 1

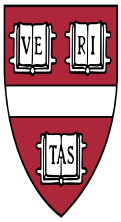
This transcript processed and delivered by Parchment




HARVARD UNIVERSITY FACULTY OF ARTS AND SCIENCES

Office of the Registrar

1350 Massachusetts Avenue, Suite 450
Cambridge, MA 02138
registrar.fas.harvard.edu
(617) 495-1543




This record is for studies in the Faculty of Arts and Sciences including Harvard College, Harvard Graduate School of Arts and Sciences, Harvard School of Engineering and Applied Sciences, and Radcliffe College. For a transcript of the record of any work in a professional school or the Division of Continuing Education, refer to that school. A list of Harvard schools is available at harvard.edu/schools

As of July 1, 1966, the certification of **Radcliffe College** transcripts is under the jurisdiction of the Registrar of the Faculty of Arts and Sciences. Beginning with the academic year 1962, the A.B. or S.B. degree awarded to Radcliffe College students is conferred upon them by Harvard University. The S.B. degree program is accredited by the Accreditation Board for Engineering and Technology.

RATE OF WORK – Beginning with the 2015-2016 academic year, the Faculty of Arts and Sciences adopted a credit system whereby a one-semester course is worth four credits and a year-long course is worth eight credits. Prior to 2015-2016, courses in the Faculty of Arts and Sciences were evaluated as either full courses or half courses. A full course was equal to eight credits; a half course to four credits. The normal rate of work is the equivalent of sixteen credits (four half courses) each term or thirty two credits (four full courses) per year. No additional credit is granted for laboratory or discussion sections.

COURSE LEVELS & SYMBOLS – Refer to registrar.fas.harvard.edu/transcript for a guide to course numbering, abbreviations, and symbols used in course names and numbers.

FOR GRADUATE STUDENTS ONLY – The minimum standard for satisfactory work is a B average in each academic year. A grade of C or INC is offset by a grade of A, and a D by two A's (no account is taken of plus and minus). The grade of INC (Incomplete) is granted only at the discretion of the instructor. A graduate student who receives a grade of INC must complete the work of the course before the end of the term following that in which the course was taken. If the work is not submitted by that time the INC becomes a permanent grade. A graduate student may petition the Dean's Office for an extension of time to complete the work of the incomplete course. Grade point averages are not computed for students in the Graduate School. A unit of "TIME" is ungraded independent work equivalent to one half course or four credits. Graduate Students who cross register into another Harvard School, refer to that schools transcript legend for information about their Grading System.

GRADE POINT AVERAGES Beginning in September 2003, the Faculty of Arts and Sciences moved to the 4-point scale: A=4.00, A-=3.67, B+=3.33, B=3.00, B-=2.67, C+=2.33, C=2.00, C-=1.67, D+=1.33, D=1.00, D-=.67. E, FL, ABS, NCR, UNS, EXLD=0 (zero). Grade Point Averages reported on the transcript for students entering the College in September 2003 are based on the 4-point scale. The transcript for continuing students in attendance as of September 2003 reports both Annual Rank (based on the 15-point scale) and Grade Point Averages (based on the 4-point scale) for the semesters the student attended prior to September 2003.

Refer to registrar.fas.harvard.edu/transcript for a description of the **Undergraduate Rank List** system in use from 1966 to 2003.

This education record is subject to the Family Educational Rights and Privacy Act of 1974 (Buckley Amendment), as amended. It is furnished for official use only and may not be released to or accessed by outside agencies or third parties without the written consent of the student concerned.

Grading System

Prior to 1950	Since 1950
A	A
B	A-
C	B+
D	B
E	B-
	C+
	C
	C-
	D+
	D
	D-
	E

Satisfactory and Passing Grades:

B- and above are honors grades
C- and above are satisfactory grades
D+, D, and D- are unsatisfactory but passing grades

Non-letter Grades:

Passing grades	CR	Credit
	PA	Pass (D- or higher)
	SAT	Satisfactory (C- or higher for undergraduates; B- or higher for graduate students)
	SEM	Satisfactory; used in emergency circumstances

Failing grades	NCR	No credit
	ABS	Absent from final examination and failure in the course
	UNS	Unsatisfactory
	UEM	Unsatisfactory; used in emergency circumstances
	EXLD, EXL	Excluded

Other Symbols

ex	Indicates excused from the final examination as an honors candidate taking General Examinations, and the adjacent grade shows the quality of work up to the final examination. Bracketed grades without the accompanying symbols "ex" indicate that the course does not count toward the undergraduate degree
EXC	Graduate students may be excused from a final examination or other course assignment by their division, department, or committee chairs on the basis of having passed departmental examinations or other requirements.
[ ]	Bracketed – does not count towards degree
EXT	Extension of time granted (undergraduates only)
INC	Incomplete (graduate students only)
WD	Indicates permission to withdraw from the course without completing requirements and without credit for the course
GNR	Grade not reported for a course taken by cross-registration
SUS	Means that the full course was suspended at midyear without credit
^^^	Grade is pending
~	Indicates that a current semester course is currently in progress
*****	Indicates a full-year course is currently in progress
MKP	Approved for Makeup Exam - Pending Final Grade
MK2	Second Approval for Makeup Exam - Pending Final Grade

June 09, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

Raquel Leslie is one of those rare students who exhibited from the outset the skill, intellect, dedication, and personality traits needed to excel as a lawyer. She is organized, pro-active, diligent, thoughtful, and conscientious. Having had the opportunity to supervise Raquel's work over her three semesters in the Media Freedom and Information Access (MFIA) Clinic, I can recommend her to you without hesitation or reservation.

MFIA is a student-led organization that provides pro bono legal representation to journalists, researchers, and advocacy groups to promote government accountability and defend the essential rights of news gatherers. Raquel has contributed to this mission as a key player on two important clinic matters. In one, she took a leading role in researching and drafting sections of a Fifth Circuit brief; in the other, she organized and helped to pursue discovery in an on-going, factually complex lawsuit challenging a purveyor of election misinformation.

In the Fifth Circuit appeal, National Press Photographers Association v. McCraw, MFIA is representing a national organization of press photographers in their challenge to a Texas law that effectively barred journalists from using drones to gather and report the news. The Clinic succeeded in winning a district court order that rejected a variety of sovereign immunity and standing arguments and struck down the law for imposing content- and speaker-based restrictions on the use of drones by photojournalists. Despite being new to the case on appeal, Raquel quickly grasped the complex and unsettled legal issues in play and worked collaboratively with the Clinic team researching and drafting the brief. Raquel took the lead on several key arguments, including those establishing plaintiffs' Article III standing, the challenged law's vagueness and overbreadth, and the ways in which the law failed intermediate scrutiny. I was impressed not only by her ability to grasp, distill and articulate the nuanced legal issues, but also by her strong strategic instincts and talents as an organizer. Raquel offered thoughtful and incisive insights both in our internal team discussions and in discussions with our co-counsel and clients, and she worked efficiently to meet our deadlines. She also enthusiastically sought out and incorporated feedback and suggestions to her drafts.

In the second matter, Freeman v. The Gateway Pundit, Raquel demonstrated her litigation skills, strategic thinking, and collaborative energy. This defamation lawsuit alleges that an online news site, The Gateway Pundit, fabricated and disseminated over a nine-month period dozens of false stories about a mother and daughter who served as election workers in Fulton County, Georgia during the 2020 election. During the past year, we engaged in wide-ranging fact discovery and legal research that required Raquel to quickly learn a variety of litigation skills, absorb large volumes of new information, and engage in strategic thinking and ongoing communications with our co-counsel partners about how best to investigate and prove our clients' claims. We had no roadmap for this kind of case alleging an affirmative effort to deceive the public, but Raquel's willingness to challenge herself and take on unfamiliar tasks was laudable, and her contributions would be hard to overstate. To identify just a few, Raquel drafted third-party subpoenas; prepared for and conducted a multi-hour Zoom interview of a key fact witness and then prepared a draft affidavit for that witness; prepared and revised an outline for deposing one of the named defendants; and conducted extensive legal research regarding evidence sufficient to prove the existence of actual malice and synthesized her findings into a detailed memorandum and proof chart. Raquel consistently turned in top-notch work, while providing steady leadership on the student team. Her eagerness and ability to organize, mentor, and guide her peers in helping litigate the case was a boon to me as a supervisor, to our counsel team, and to the clients.

It would be easy to say that Raquel is a natural litigator because she is an excellent writer, researcher, and communicator who has seamlessly made herself an integral part of Clinic teams. But this would discount the tremendous effort she puts in, as well as the professionalism, curiosity, and good humor she brings to all her Clinic work. Throughout her time in the Clinic, Raquel has been a much valued, respected, and well-liked colleague.

Raquel's success in the MFIA Clinic is the product of several personal attributes that would serve you well as one of your clerks:

She is a careful, insightful, and creative thinker, who can quickly grasp a problem and analyze it from multiple directions.

She is a strong communicator who can articulate her conclusions and her reasoning in a clear and concise manner.

She is a careful listener, taking in the views of others but possessing the confidence to defend positions she believes are right rather than go along with groupthink.

She is hard working, diligent about deadlines, and extremely productive.

She is a pleasure to work with, displaying a quiet warmth, good humor and solidity that contribute to the cohesion of a team.

I am confident Raquel would be a great asset to your chambers and recommend her to you without hesitation or reservation. Please do not hesitate to contact me at 212-663-6162 if I can provide any additional information.

David Schulz - david.schulz@yale.edu - 917-733-9014

Very truly yours,

David Schulz
Director
Media Freedom and Information Access Clinic
Information Society Project

June 07, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I understand that Raquel Leslie is applying to your chambers for a judicial clerkship. An executive editor of the *Yale Law Journal* with a stellar transcript, Raquel is a brilliant, phenomenally hardworking, refreshingly unentitled young woman – one of my favorite students and in my opinion one of the best writers in Yale Law School's Class of 2024 – and I am writing to give her my highest possible recommendation.

I know Raquel quite well because she has taken two of my classes and wildly impressed me in both. Last fall, she was one of about sixty students I taught in my Advanced Contracts seminar. Every week, students were required to submit reaction papers based on the assigned readings, which ranged from judicial opinions to actual contracts to articles written from law-and-economics, libertarian, critical theory, and other normative perspectives. It's often hard to compare student writing, but not in Raquel's case. Her weekly response papers were consistently among the sharpest, most thoughtful and well-crafted in the class – not to mention perfectly Bluebooked. This past spring, Raquel also took my International Business Transactions, and again she stood out. Her comments were always spot on and penetrating, but also charming and often witty. Raquel's final paper was one of the five best in an unusually high-powered class of 110 students (that included three Rhodes Scholars and virtually the entire masthead of the *Yale Law Journal*). I should note also that Raquel is wonderfully self-starting and low maintenance; whereas many of her classmates repeatedly wanted to "meet" for guidance and eventually asked for multiple extensions, Raquel was one of the very few students to submit her final paper early and in highly polished form. Raquel received an Honors in both my classes.

Raquel's standout performance in my class is part of a broader pattern. She has received Honors in some of our largest, most difficult and strictly curved black letter courses like Evidence (which she aced as a 1L), Business Organizations, and most recently Nick Parrillo's famously competitive Administrative Law class of 117 students.

I should stress again that Raquel is a superb legal writer – someone who truly enjoys the craft – with an unusual amount of training under her belt. Before coming to law school, she worked for two years as a legal analyst at Kobre & Kim, where, among other things, she assisted in the preparation of affidavits, motions for summary judgment, and the opening statement at trial in an ongoing trade secret theft dispute before the International Trade Commission. At Yale Law School, as part of the MFIA Clinic, Raquel helped write a 73-page brief filed in the Fifth Circuit Court of Appeals on behalf of the National Press Photographers Association and Texas photojournalists in a constitutional challenge to a Texas law regulating drone photography. Raquel's exceptional writing skills were recognized by the previous Board of the *Yale Law Journal* when they selected her to be Executive Editor for Notes & Comments; in that capacity, Raquel provides detailed feedback to student authors on their writing and argumentation. Finally, and fittingly, this past spring, Raquel was one of just over a dozen students selected – in a brutally competitive process – to be a Coker Fellow next Fall, largely responsible for teaching a "small group" of sixteen 1Ls legal research and writing skills.

On a more personal level, Raquel is delightful – mature, quietly confident, unpretentious, respectful, perceptive, upbeat, diplomatic, and fun. She's also kind and deeply empathetic. As someone who lost her father in high school, and then within a very short time also her grandmother, grandfather, and childhood best friend to Ewing's Sarcoma, Raquel restarted a support group at Yale Law School called Good Grief for students who have similarly lost loved ones. Finally, Raquel is a bridge builder, committed to bipartisanship and cooperation across the political aisle. Through her leadership and involvement with the National Security Group and the China Center, Raquel has befriended both liberal and conservative students and learned to work effectively with them towards shared goals despite disagreements. In the sadly increasingly fraught atmosphere at Yale Law School, I marvel at how Raquel always manages to stay above the fray – resisting herd mentality while being friends with everyone, liked and trusted by all.

As I hope is clear, I think extremely highly of Raquel, and am absolutely confident that she would make a first-rate judicial clerk. Please do not hesitate to contact me by email (amy.chua@yale.edu) or on my cell phone (203-668-6682) if you have any questions. I would welcome the opportunity to help in any way.

Thank you very much for your time and attention.

Sincerely yours,

Amy Chua
John M. Duff, Jr. Professor of Law
Yale Law School
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(203) 432-8715

June 02, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I write to highly recommend Raquel Leslie for a clerkship in your chambers.

I first met Raquel in the Spring of 2022, when she took my International Law course as a 1L. For that class, she wrote a Supervised Analytic Writing paper that explored the Commerce Department's recent practice of using the Entity List as a form of trade blacklisting against China for state-sanctioned economic espionage, even though this widely condemned activity is not formally considered an internationally wrongful act. She assessed past efforts to regulate this practice and building the normative and prescriptive case for a future treaty governing economic espionage. Her writing and research were sophisticated, and the paper excellent.

That same semester, Raquel helped litigate three FOIA requests I had filed to secure the release of nonbinding agreements from the Departments of State, Defense, and Homeland Security as part of the Media Freedom and Information Access Clinic. She and the rest of the team were dogged in working to help secure the documents I sought—balancing litigation and negotiation, a strategy that ultimately secured us all the information we were seeking without going to trial.

This past term, Raquel was a student in my Foreign Relations and International Law in Practice course. In that course, students write intensive memos every single week. Most of her work focused on exploring whether atrocity propaganda of the kind we have seen Russia weaponize in Ukraine can generate state or platform responsibility under international criminal law. Raquel conducted extensive research into various complicity theories under the Alien Tort Statute, shareholder proposals and shareholder derivative lawsuits, and the Justice for Victims of War Crimes Act. Many of these were dead ends, but the research was nonetheless incredibly well done and valuable. Indeed, I was impressed by Raquel's ability to take a clear-eyed view of the law and recognize both opportunities it offers and where it simply doesn't provide a path for accountability. That can sometimes be hard for students (and lawyers!), but I think is a critically important skill. And the research was shared with interested persons in the U.S. government, who expressed to me how useful and well done the work was.

After documenting the shortcomings of these mechanisms and existing ICC case law, Raquel and a fellow student developed a novel argument that modern atrocity propaganda presents a paradox: though it seems to implicate the kind of state-to-state conflict that the international system is designed to address, its characteristics suggest that it is better left to regulation at the domestic level. They completed a full draft of the article that they plan to revise over the summer and hopefully submit to law journals in August or February.

Raquel has sought out a number of legal writing opportunities in law school besides those she has done under my supervision. She is Executive Editor for Notes & Comments for the Yale Law Journal. As the Executive Editor, she leads a committee of ten students to select the highest quality student scholarship at YLS. She also served as a Submissions Editor for the Yale Journal of International Law. She is an incoming Coker Fellow for Professor Sarath Sanga (meaning that she will assist with the legal research and writing training for incoming 1Ls). Her preliminary round brief in the 2022-2023 Morris Tyler Moot Court of Appeals competition scored in the highest quintile of all 45 competitors. Last fall, her clinic team also filed a 73-page brief in the Fifth Circuit Court of Appeals on behalf of the National Press Photographers Association and Texas photojournalists in a constitutional challenge to a Texas law regulating drone photography and journalism.

Raquel is the child of an Ecuadorian immigrants and the first soon-to-be-lawyer in her family. She plans to become a litigator. This summer, she will be interning at Debevoise & Plimpton in the international disputes and white collar practices. She aspires to a career in public service long term. After spending a few years in private practice, she plans to apply to become an Assistant U.S. Attorney at SDNY in the National Security and/or Public Corruption units. She wants to clerk because she enjoys legal research and writing and rightly believes that clerking will offer an opportunity to further hone her legal skills. She will bring to the job skills and knowledge gained not only in law school but also having worked in public service both at the Defense Intelligence Agency. She also has experience working in a courtroom both as an analyst at Kobre & Kim and as an intern last summer in the Criminal Division of the U.S. Attorney's Office for SDNY.

For all these reasons, I believe that Raquel will make an excellent law clerk. Please feel free to e-mail me at oona.hathaway@yale.edu or call me at 203-436-8969 with any questions you may have.

Sincerely,

Oona A. Hathaway
Gerard C. and Bernice Latrobe Smith Professor of International Law
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WRITING SAMPLE

The attached writing sample is an excerpt of a brief filed in the Fifth Circuit by my team in Yale Law School's Media Freedom and Information Access Clinic. The case is *National Press Photographers Association v. McCraw* and involves a challenge to a Texas state law restricting the use of drones for photojournalism. The issues presented were:

1. Whether Plaintiffs established Article III standing to challenge a state criminal law that substantially restricts their First Amendment rights.

2. Whether the district court was permitted under *Ex parte Young* to adjudicate a constitutional challenge to a state criminal law in a lawsuit brought against government officials responsible for enforcing that law.

3. Whether the challenged provisions of Chapter 423 facially violate the First Amendment.

4. Whether the challenged provisions of Chapter 423 are unconstitutionally vague.

5. Whether portions of Chapter 423 are preempted by federal regulation of the nation's airspace.

My clinic team represented the Plaintiffs-Appellees/Cross-Appellants National Press Photographers Association, Texas Press Association, and Joseph Pappalardo. I chose as my writing sample a previous version of the standing section of the brief which has not been edited by anyone other than myself. I have received permission from the clinic director to use this excerpt of the brief as my writing sample.

I. PLAINTIFFS PROVED THEIR STANDING

The District Court properly found that Plaintiffs have proven their Article III standing. To bring suit in federal court, "a plaintiff must (1) have suffered an injury in fact, (2) that is fairly traceable to the challenged action of the defendant, and (3) that will likely be redressed by a favorable decision." *Speech First, Inc. v. Fenves*, 979 F.3d 319, 330 (5th Cir. 2020) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)). The undisputed facts in this case establish that Plaintiffs have been chilled from engaging in drone photojournalism, an injury which is traceable to Defendants' ability to enforce Chapter 423 against Plaintiffs and redressable by an order enjoining that enforcement. Because NPPA's and TPA's members suffered this chill, the organizations have associational standing, as well as standing to sue on their own behalf for injuries Chapter 423 caused them.

A. Plaintiff Pappalardo and Plaintiffs NPPA's and TPA's Members Were Chilled from Engaging in Drone Journalism by the Prospect of Defendants' Enforcement of Chapter 423

i. Plaintiff Pappalardo and Plaintiff Organizations' Members Refrained from Drone Journalism for Fear of Civil or Criminal Liability

The District Court correctly determined that Plaintiffs' First Amendment injuries give them Article III standing. Plaintiffs have shown that the threat of enforcement under Chapter 423 caused them to reasonably self-censor their speech for fear of being punished. "A plaintiff has suffered an injury in fact if he (1) has an 'intention to engage in a course of conduct arguably affected with a constitutional interest,' (2) his intended future conduct is 'arguably . . . proscribed by the policy in question,' and (3) 'the threat of future enforcement of the challenged policies is substantial.'" *Id.* (citing *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 161-64 (2014)). "It is not hard to sustain standing for a pre-enforcement challenge in the highly sensitive area of public regulations governing bedrock political speech." *Id.* at 331. This Circuit "has repeatedly held, in the pre-

enforcement context, that 'chilling a plaintiff's speech is a constitutional harm adequate to satisfy the injury-in-fact requirement.'" *Id.* at 330-31 (quoting *Houston Chron. Pub. Co. v. City of League City*, 488 F.3d 613, 618 (5th Cir. 2007)).

"[W]hen dealing with pre-enforcement challenges to recently enacted (or, at least, non-moribund) statutes that facially restrict expressive activity by the class to which the plaintiff belongs, courts will assume a credible threat of prosecution in the absence of compelling contrary evidence." *Id.* at 335 (quoting *N.H. Right to Life PAC v. Gardner*, 99 F.3d 8, 15 (1st Cir. 1996)). "[A] lack of past enforcement does not alone doom a claim of standing." *Id.* at 336 (holding that campus "bias incident" reports that the university collected based on the challenged policies created "a fear of prosecution that is not 'imaginary or wholly speculative,'" even though the university never punished any student for violating the policies) (quoting *Ctr. for Individual Freedom v. Carmouche*, 449 F.3d 655, 660 (5th Cir. 2006)); *see also Barilla v. City of Houston*, 13 F.4th 427, 431 (5th Cir. 2021) (holding that plaintiff, a street performer bringing a pre-enforcement challenge against Houston's busking restrictions, did not need to show that he had been cited or threatened with arrest to have standing).

A plaintiff need not "first expose himself to actual arrest or prosecution . . . a credible threat of enforcement is sufficient." *Justice v. Hosemann*, 771 F.3d 285, 291 (5th Cir. 2014) (quotations omitted); *see also Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 298 (1979) (holding that plaintiffs who engage in activity "arguably affected with a constitutional interest, but proscribed by a statute," should not "be required to await and undergo a criminal prosecution as the sole means of seeking relief"); *Animal Legal Def. Fund v. Vaught*, No. 20-1538, 2021 WL 3482998, at *3 (8th Cir. Aug. 9, 2021) ("A formal threat . . . is not required to establish an injury

in fact. The question is whether the plaintiffs have an objectively reasonable fear of legal action that chills their speech.").

As the District Court properly recognized, Plaintiff Pappalardo has sufficiently pleaded an Article III injury-in-fact because he stopped using his drone for newsgathering in Texas altogether "for fear of facing criminal or civil liability." Pappalardo Decl. at 10, 16. Pappalardo has not flown his drone to report on any stories in Texas since December 2017 after being told that the company that published the *Dallas Observer* would not provide him with a defense in any legal action should he take images with his UAV in contravention of Chapter 423. Pappalardo Decl. at 10, 11. But for the prospect that he would be prosecuted under Chapter 423, Pappalardo would have used his drone to report on several newsworthy stories, including panic at the gas pumps in the aftermath of Hurricane Harvey, house fires, construction projects, and urban sprawl. Pappalardo Decl. at 14. And but for that risk of prosecution, he would use his drone for future reporting, including stories about illegal poaching in urban areas and gridlock hampering first responders. Pappalardo Decl. at 14.

Defendants McCraw and Mathis do not even mention Plaintiff Pappalardo in their opening brief and therefore effectively concede that he has standing. Because only one plaintiff with standing confers jurisdiction on the Court, that should end the inquiry with respect to Defendants McCraw and Mathis. *See Rumsfeld v. Forum for Acad. & Inst. Rights, Inc.*, 547 U.S. 47, 52 n.2 (2006) (holding that only one party must have standing "to satisfy Article III's case-or-controversy requirement"). And Defendant Mau does not seriously contest that Pappalardo has suffered a chill of his protected First Amendment activities that constitutes an injury-in-fact. Instead, Defendant Mau incorrectly argues that Pappalardo must establish a particularized injury *with respect to Defendant Mau* to establish standing. Mau Br. at 14-15. The relevant inquiry is instead whether

the injury "affect[s] *the plaintiff* in a personal and individual way." *McMahon v. Fenves*, 946 F.3d 266, 271 (5th Cir. 2020) (emphasis added) (quoting *Lujan*, 504 U.S. at 560 n.1). Under this standard, Pappalardo's injury is particularized in that he has self-censored his drone-related speech in his reporting throughout Texas, including in Hays County, where he would face a threat of prosecution by Defendant Mau were he to use his drone for newsgathering.

Plaintiffs NPPA and TPPA have demonstrated "multiple independent injuries" beyond that of Pappalardo. Order at 10. Until the injunction, NPPA member Brandon Wade had self-censored his drone photography out of fear of liability under Chapter 423. Wade Decl. at 173. He lost a series of assignments, which would have earned him several thousand dollars, because of Chapter 423. Contrary to Defendant Mau's assertions, NPPA member Guillermo Calzada's newsgathering activities have also been chilled since he was approached by San Marcos police in 2018 and told he was violating state law for using a drone to photograph the aftermath of an apartment building fire. Before the District Court enjoined the law's use, he limited his use of drones to gather the news as a result of the ambiguity of Chapter 423. Calzada Decl. at 131-33. Plaintiff TPA's member newspapers likewise suffered harm caused by the threat of Chapter 423's enforcement against photographers. In response to Chapter 423, TPA member *The Dallas Morning News* was forced to adopt a policy against drone use by staff or freelance photographers on assignment, and specifically avoided publishing photos by Brandon Wade captured by a drone for fear of violating the law. Wade Decl. at 167-68. As the District Court correctly held, "any one of these injuries is sufficient to satisfy the injury-in-fact requirement." Order at 10.

Defendant Mau takes the fact that photos Calzada took in San Marcos, Hays County were published in the *San Antonio Express-News* as evidence that Calzada did not in fact self-censor his drone-related speech. But this Circuit's case law does not demand that a plaintiff wholly refrain

from speech in order for his expressive activity to be chilled. *See, e.g.*, *Keenan v. Tejeda*, 290 F.3d 252, 259 (5th Cir. 2002) (finding that a partial chill is sufficient to allege a First Amendment injury). And in any case, Calzada was met with the threat of criminal punishment when he did use his drone for newsgathering, indicating that his self-censorship was justified.

Plaintiffs refrained from future reporting throughout Texas because they feared prosecution—by Defendant Mau should they take drone photographs in Hays County, and by Defendants McCraw and Mathis across the state—irrespective of evidence of past enforcement. In the absence of any indication from Defendants of their intention not to enforce Chapter 423, this Court should, in keeping with the Circuit's precedent, assume a credible threat of prosecution from Defendants. *See Barilla*, 13 F.4th at 433 (assuming a "substantial threat of future enforcement" where the city "did not disclaim its intent to enforce the Busking Ordinances[,] . . . instead stress[ing] the Ordinances' legitimacy and necessity"). Moreover, Defendants have vigorously defended the constitutionality of Chapter 423 throughout the course of this litigation and given every indication that they believe the statute covers the Plaintiffs' intended photojournalism. *See* McCraw Br. at 1-3. This makes Plaintiffs' fear of future enforcement credible, not speculative—and thus the chill objective, not subjective. *See Houston Chron.*, 488 F.3d at 619; *Meese v. Keene*, 481 U.S. 465, 473 (1987).

ii. Plaintiffs' Chill is Traceable to Defendants' Conduct

Defendants, as the District Court said, have "overcomplicate[d]" the issue of traceability. Order at 10. Defendants Mau, McCraw, and Mathis each indisputably have the power and duty under state law to enforce Chapter 423. And Plaintiffs' injuries stem from the fear of future enforcement by Defendants—a fear that has motivated them to self-censor by refraining from using drones for newsgathering or publishing photos taken by drones throughout Texas, including

in Hays County. "[F]or purposes of traceability, the relevant inquiry is whether the plaintiffs' injury can be traced to allegedly unlawful conduct of the defendant, not to the provision of law that is challenged." *Collins v. Yellen*, 141 S. Ct. 1761, 1779 (2021) (internal quotation marks omitted). Under this standard, Plaintiffs' injuries are traceable to all three Defendants.

Defendants have conceded that Mau has prosecutorial authority. *See* Order at 14. The fact that Defendant Mau's prosecutorial authority is limited to Hays County (Mau Br. at 15) is immaterial given that, as the District Court found, but for Chapter 423 Pappalardo, Wade, and Calzada would have engaged in drone journalism throughout Texas, which of course includes Hays County. Mau further seems to ignore the fact that Plaintiffs are journalists whose stated intention is to bring their drones where the news leads them. Under Mau's theory, must Pappalardo, Wade, or Calzada identify the next hurricane that they intend to cover in Hays County in order to establish standing? Despite Defendant Mau's further efforts to distance himself from the State Defendants by arguing that his office has never threatened prosecution against any of the Plaintiffs or their members, the fact that Calzada testified that he interacted with ATF and San Marcos Police officers in 2018 regarding his drone use also establishes the requisite nexus with District Attorney Mau and the Hays County District Attorney's Office, as San Marcos is located within Hays County.

iii. Plaintiffs' Chill Has Been Alleviated by an Order from the District Court Enjoining Defendants from Enforcing Chapter 423

The District Court correctly found that Plaintiffs' injuries are redressable. ROA.1229 (citing ROA.1100). "To demonstrate redressability, a plaintiff must establish that the practical consequence of a declaration 'would amount to a significant increase in the likelihood that the plaintiff would obtain relief that directly redresses the injury suffered.'" *Ctr. for Inquiry, Inc. v. Warren*, 845 F. App'x 325, 328 (5th Cir. 2021) (quoting *Utah v. Evans*, 536 U.S. 452, 464 (2002)). Full redressability is not required. *Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982) ("[A] plaintiff

satisfies the redressability requirement when he shows that a favorable decision will relieve a discrete injury to himself. He need not show that a favorable decision will relieve his every injury.").

Contrary to Defendant Mau's assertions, the injunction issued in this case is not "utterly meaningless." Mau Br. at 22. Granting Plaintiffs' requested relief against the Defendants has, at minimum, permitted them to gather the news using drones throughout Texas without fear of arrest or prosecution by Defendants. *See Speech First*, 979 F.3d at 338 (finding "the causation and redressability prongs of the standing inquiry are easily satisfied" as "potential enforcement of the challenged policies caused Speech First's members' self-censorship, and the injury could be redressed by enjoining enforcement of those policies") (internal quotations and citation omitted); *Barilla*, 13 4th at 431 n.1 (finding traceability and redressability when "the City's Busking Ordinances caused Barilla to self-censor and a ruling in Barilla's favor would prohibit the City from engaging in enforcement"). TPA member *The Dallas Morning News* has allowed NPPA member Brandon Wade to use drones for newsgathering on assignment for the paper as a result of the ruling. *The Dallas Morning News* has also since given their staffers the green light to use drones for newsgathering. Their staff photographer Smiley Pool, also an NPPA member, shot his first staff drone assignment on October 7, 2022. His chill having also been relieved by the injunction, Guillermo Calzada used his drone for newsgathering in Hays County recently on a different story.

The *San Antonio Express-News* continues to cover the San Marcos fire, an ongoing matter of public concern. The outlet republished Guillermo Calzada's photo of the fire as recently as June 13, 2022. Defendant Mau ignores the fact that the provision of the statute that was enjoined makes it a crime to merely publish the photo. Under § 423.004, it is a potential offense each time the image is "disclose[d], display[ed], distribute[d] or otherwise use[d]." § 423.004(a),(c). Prior to the

injunction, Mau had the ability to prosecute the newspaper and the photographer for a violation of § 423.004 each time the image was published. The chill thus occurred on an ongoing basis for what remains an ongoing story, thereby establishing a specific need to enjoin Mau from enforcing the statute in addition to the need to prevent him from prosecuting future drone photojournalism.

Defendant Mau also falsely claims that Pappalardo neither alleged nor established that he refrained from drone-based journalistic activities in Hays County (Mau Br. at 22), when Pappalardo alleged—and proved—exactly that. Pappalardo's drone photography spans the state; he covers natural disasters and other news events. Furthermore, Pappalardo's previous activity is irrelevant to traceability because, as Defendant Mau fails to contest, it is Pappalardo's *future* intent to cover the news (including in Hays County) with his drone that was chilled. That is the injury the injunction relieved.

The declaratory judgment in this case also addressed Pappalardo's injuries in a concrete way. Since his injuries stem from his fear of prosecution, a declaratory judgment has had the practical effect of assuring Pappalardo of his rights, and if another District Attorney were to try to prosecute him for violating Chapter 423, he could point to the judgment as important support for his case. This is enough to establish redressability. *Utah v. Evans*, 536 U.S. 452, 464 (2002) (finding redressability where "the practical consequence of [the declaratory judgment] would amount to a significant increase in the likelihood that the plaintiff would obtain relief that directly redresses the injury suffered").

iv. Plaintiffs NPPA and TPA Also Satisfy Associational Standing

The District Court properly found that Plaintiffs NPPA and TPA satisfy the three elements of associational standing—a finding which Defendants do not dispute. *See United Food & Commer. Workers Union Local 751 v. Brown Grp.*, 517 U.S. 544, 553 (1996) ("[A]n association

has standing to bring suit on behalf of its members when: [1] its members would otherwise have standing to sue in their own right; [2] the interests it seeks to protect are germane to the organization's purpose; and [3] neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.") (quoting *Hunt v. Wash. State Apple Advert.Comm'n*, 432 U.S. 333, 343 (1977)).

First, NPPA members Wade and Calzada have demonstrated that their speech was chilled by the threat of enforcement under Chapter 423 sufficient to establish standing in their own right. *See supra* § I.A(i). And TPA member newspaper *The Dallas Morning News* had, before the entering of the injunction, adopted a policy against using UAV photographs as a result of this threat, chilling this form of expression. Wade Decl. at 167-68. Second, the interest that NPPA and TPA seek to vindicate—the right of journalists to use drones as a tool to engage in their First Amendment-protected newsgathering—is clearly germane to the organizations' purposes. "NPPA's mission is supporting and advocating for visual journalists and promoting excellence in the profession." Pls.' Mot. Summ. J. at 46, citing Ramsess Decl. at 159. TPA "promotes the welfare of Texas newspapers, encourages higher standards of journalism, and plays an important role in protecting the public's right to know as an advocate of First Amendment liberties." Baggett Decl. at 122. Third, as a facial challenge to the constitutionality of Chapter 423, this lawsuit does not require participation of the individual members of either organization. *See United Food & Commer. Workers Union Local 751*, 517 U.S. at 546 ("'[I]ndividual participation' is not normally necessary when an association seeks prospective or injunctive relief for its members." (quoting *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 342-43 (1977))). Thus, NPPA and TPA have associational standing.

B. The Organizational Plaintiffs Separately Have Standing to Sue in Their Own Right Because They Diverted Resources to Addressing Chapter 423

The District Court properly held that Pappalardo has standing as an individual and that NPPA and TPA both have associational standing. NPPA and TPA independently have organizational standing to sue. An organization can establish standing on its own if it "meets the same standing test that applies to individuals." *OCA-Greater Hous. v. Texas*, 867 F.3d 604, 609-14 (5th Cir. 2017). "Organizations that seek to establish standing in their own right may satisfy the injury-in-fact requirement by showing a diversion of their resources." *Steward v. Abbott*, 189 F. Supp. 3d 620 (W.D. Tex. 2016). The record demonstrates that NPPA's attorneys spent hours researching First Amendment protections, meeting with lawmakers in an attempt to revise the provisions of Chapter 423, and counseling members about the Chapter 423 provisions. Ramsess Decl. at 12, 16-17. TPA was similarly required to devote time and resources to discussing Chapter 423 with its members, and it distributed literature regarding the statute to inform its members. Baggett Decl. at 5. This diversion of NPPA's and TPA's resources from their missions and activities to address the effects of Chapter 423, necessarily depriving NPPA and TPA of time and resources they could otherwise have devoted to their mission-furthering activities, sufficiently demonstrates an injury. Enjoining enforcement of Chapter 423 has remedied those harms by enabling NPPA and TPA to turn their attention and resources away from combatting Chapter 423's threat on the organizations' members' photojournalism. NPPA and TPA thus also satisfy the causation and redressability requirements of standing.

Applicant Details

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Contact Phone Number	**4156722729**

Applicant Education

BA/BS From	**University of Pennsylvania**
Date of BA/BS	**August 2018**
JD/LLB From	**Yale Law School** **https://www.nalplawschools.org/content/OrganizationalSnapshots/OrgSnapshot_225.pdf**
Date of JD/LLB	**May 31, 2024**
Class Rank	**School does not rank**
Law Review/ Journal	**Yes**
Journal(s)	**Yale Law Journal** **Yale Journal of Law and Technology**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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June 12, 2023

The Honorable John Walker, Jr.
Senior Circuit Judge
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker,

I am a rising third-year student at Yale Law School, where I am an Articles & Essays Editor of the *Yale Law Journal*. I am writing to apply for a clerkship in your chambers for the 2025-2026 term. I am hoping to pursue a clerkship in Connecticut after my graduation to remain with my partner, who works at Yale New Haven Health. As an aspiring Assistant United States Attorney, I believe I would be a strong addition to your chambers.

My research and writing skills will make me an effective judicial clerk. As an intern working at the U.S. Attorney's Office for the Southern District of New York, I wrote significant portions of bench memoranda, sentencing recommendations, criminal forfeiture motions, and jury instructions in three criminal cases prosecuted in the Southern and Eastern Districts of New York. At Wachtell Lipton and Yale's Veterans Clinic, I wrote letter briefs and trial motions in two civil cases in the Northern District of California and the District of Connecticut, and three administrative proceedings before the Department of Veterans Affairs, the Federal Trade Commission, and the U.S. Citizenship and Immigration Services.

In addition to developing my experience in litigation, I have also enjoyed deep research and sustained writing on the use of emergency economic sanctions powers, and I was honored to have been awarded the Ambrose Gherini Prize for best paper in international law for that work.

My resume, law school transcript, undergraduate transcript, and writing sample are enclosed. Recommendations will be forthcoming from Professors Amy Chua, Michael Wishnie, Oona Hathaway, and Assistant United States Attorney David Felton. I would welcome the opportunity to interview with you and look forward to hearing from you. Thank you for your consideration.

Sincerely,

Brian J. Liu

Brian J. Liu

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EDUCATION

Yale Law School **New Haven, CT**
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Yale Journal of Law and Technology (Articles Editor)
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Research Assistant to Dean Emeritus Robert Post
Yale Society of International Law (Vice President for Academics)
National Security Group (Vice President for Events)
Honors: Ambrose Gherini Prize (Awarded for Best Paper in International Law)
Federal Bar Council, Southern District of New York (Judge Lloyd MacMahon Fellow)
Asian American Bar Association of New York (Don H. Liu Scholar)
Kerry Initiative (Fellow and Research Assistant to Secretary John Kerry)
International Refugee Assistance Project (Project Director and Winner of Excellent Project Team Award)

University of Pennsylvania **Philadelphia, PA**
Bachelor of Arts, *summa cum laude* and Phi Beta Kappa, Philosophy, Politics, and Economics Graduation: May 2018
Activities: Study abroad in Beijing (Peking University), Hong Kong (Chinese University of Hong Kong), Taipei, Seoul, and Dar es Salaam for four semesters as a Defense Department Boren Scholar and State Department Gilman Scholar
Honors: College Alumni Society Prize (most distinguished graduate out of 200 students in the department)
Fulbright Fellowship (awarded for research in China, declined due to conflict with military obligations)
Stanford Hoover Institution Director's Prize (top 10% graduate of public policy program)

PROFESSIONAL EXPERIENCE

Wachtell, Lipton, Rosen & Katz **New York, NY**
Summer Associate May 2023 – Present
- Writing research memoranda on horizontal and vertical competition issues in response to Federal Trade Commission antitrust investigations of multi-billion-dollar mergers in the aerospace, defense, and mortgage industries

US Attorney's Office for the Southern District of New York **New York, NY**
Criminal Division Intern (Cybercrime and Transnational Money Laundering) May 2022 – Jul. 2022
- Wrote legal research memoranda on Eighth Amendment and criminal forfeiture issues to support the forfeiture of $3.4 billion in cryptocurrency illicitly obtained from the darknet marketplace Silk Road, the largest financial seizure in Justice Department history
- Researched and wrote bench memoranda on evidentiary motions and drafted jury instructions and witness questions in support of a $80 million white collar trial against a former law firm partner

Yale Veterans Legal Services Clinic **New Haven, CT**
Legal Intern Jan. 2022 – May 2023
- Wrote letter briefs, prepared expert testimony, and engaged in legislative advocacy in support of a successful administrative appeal of the Department of Veterans Affairs' denial of service-connected disability benefits for a veteran exposed to plutonium waste
- Drafted complaints and trial motions in the District of Connecticut in support of a military advocacy organization seeking access to military sexual assault records under the Freedom of Information Act
- Prepared naturalization applications, wrote letter briefs, and represented deported veterans in hearings before the US Citizenship and Immigration Services, resulting in the successful naturalization of two formerly-deported veterans

Google, Emerging Markets and Payments **San Francisco, CA**
Legal Assistant II Aug. 2018 – Jul. 2021
- Negotiated commercial contracts and drafted terms of service to support product launches in emerging markets, including free public wi-fi in Nigeria, data crowdsourcing in Kenya, and global stock information
- Received the highest performance rating of "Superb" in 2020, awarded to the top 3% of employees across the company

US Army Reserve, Military Intelligence **Camp Parks, CA**
Military Intelligence Officer May 2018 – Present
- Serving as an Army reservist intelligence officer, where I planned and executed a yearly intelligence analysis exercises involving 25 intelligence analysts focused on the North Korean military

INTERESTS AND SKILLS

- Interests: General aviation (licensed private pilot), diving (licensed PADI advanced SCUBA diver), and hiking
- Languages: Cantonese (native), Mandarin (advanced), Spanish (intermediate)

YALE LAW SCHOOL
Office of the Registrar

TRANSCRIPT RECORD

YALE UNIVERSITY

Date Issued: 15-JUN-2023

Record of: Brian J Liu
Issued To: Brian Liu
Parchment DocumentID: TWNAFISN

Date Entered: Fall 2021

Candidate for : Juris Doctor MAY-2024

SUBJ	NO.	COURSE TITLE	UNITS	GRD	INSTRUCTOR
Fall 2021					
LAW	10001	Constitutional Law I:Section A	4.00	CR	J. Driver
LAW	11001	Contracts I: Group 2	4.00	CR	L. Brilmayer
LAW	12001	Procedure I: Section B	4.00	CR	J. Suk
LAW	14001	Criminal Law & Admin I: Sect C	4.00	CR	J. Whitman
		Term Units 16.00 Cum Units 16.00			
Spring 2022					
LAW	21023	Cybersecurity, Cyberlaw and IR	1.00	CR	T. Wittenstein
LAW	21601	Administrative Law	4.00	P	N. Parrillo
LAW	21763	International Law	4.00	H	O. Hathaway
		Supervised Analytic Writing			
LAW	30123	Veterans Legal Services Clinic	2.00	H	M. Wishnie, M. Brooks
LAW	30124	VeteransLegalServicesFieldwork	2.00	H	M. Wishnie, M. Brooks
LAW	30199	Trial Practice	2.00	CR	J. Pottenger
		Term Units 15.00 Cum Units 31.00			
Fall 2022					
LAW	20219	Business Organizations	4.00	P	J. Macey
LAW	20226	Evidence	3.00	P	P. Shechtman
LAW	20395	Comparative Criminal Procedure	2.00	H	F. Davis
LAW	20530	Advanced Contracts: Seminar	2.00	H	A. Chua
LAW	30126	Advanced VLSC Fieldwork	3.00	H	J. Parkin, M. Brooks
		Term Units 14.00 Cum Units 45.00			
Spring 2023					
LAW	21068	Antitrust	4.00	H	G. Priest
LAW	21209	International Business Trans.	4.00	H	A. Chua
LAW	21430	White Collar Criminal Defense	3.00	H	K. Stith, D. Zornow
LAW	30126	Advanced VLSC Fieldwork	2.00	H	M. Wishnie, M. Brooks
		Term Units 9.00 Cum Units 54.00			
IN PROGRESS WORK					
Spring 2023					
LAW	21604	Modern Commerce and Contracts	2.00		L. Brilmayer
		In Progress Units 2.00			

Comments:
Awarded the Ambrose Gherini Prize for the
academic year 2021 - 2022.

********** END OF TRANSCRIPT **********

LEG. SCHOL. YALENS. NOVI PORT. ANN. DOM. MDCCCXXIV CONDI.
LUX ET VERITAS

HEATHER ABBOTT, REGISTRAR

Official transcript only if registrar's signature, embossed university seal and date are affixed.

YALE LAW SCHOOL
P.O. Box 208215
New Haven, CT 06520

EXPLANATION OF GRADING SYSTEM

Beginning September 2015 to date

HONORS	Performance in the course demonstrates superior mastery of the subject.
PASS	Successful performance in the course.
LOW **P**ASS	Performance in the course is below the level that on average is required for the award of a degree.
CREDIT	The course has been completed satisfactorily without further specification of level of performance. All first-term required courses are offered only on a credit-fail basis. Certain advanced courses are offered only on a credit-fail basis.
FAILURE	No credit is given for the course.
CRG	Credit for work completed at another school as part of an approved joint-degree program; counts toward the graded unit requirement.
RC	Requirement completed; indicates J.D. participation in Moot Court or Barrister's Union.
T	Ungraded transfer credit for work done at another law school.
TG	Transfer credit for work completed at another law school; counts toward graded unit requirement.
EXT	In-progress work for which an extension has been approved.
INC	Late work for which no extension has been approved.
NCR	No credit given because of late withdrawal from course or other reason noted in term comments.

Our current grading system does not allow the computation of grade point averages. Individual class rank is not computed. There is no required curve for grades in Yale Law School classes.

Classes matriculating September 1968 through September 1986 must have successfully completed 81 semester hours of credit for the J.D. (Juris Doctor) degree. Classes matriculating September 1987 through September 2004 must have successfully completed 82 credits for the J.D. degree. Classes matriculating September 2005 to date must have successfully completed 83 credits for the J.D. degree. A student must have completed 24 semester hours for the LL.M. (Master of Laws) degree and 27 semester hours for the M.S.L. (Master of Studies in Law) degree. The J.S.D. (Doctor of the Science of Law) degree is awarded upon approval of a thesis that is a substantial contribution to legal scholarship.

For Classes Matriculating 1843 through September 1950

80 through 100 = Excellent
73 through 79 = Good
65 through 72 = Satisfactory
55 through 64 = Lowest passing grade
0 through 54 = Failure

To graduate, a student must have attained a weighted grade of at least 65.

For Classes Matriculating September 1951 through September 1955

E = Excellent
G = Good
S = Satisfactory
F = Failure

To graduate, a student must have attained a weighted grade of at least Satisfactory.

For Classes Matriculating September 1956 through September 1958

A = Excellent
B = Superior
C = Satisfactory
D = Lowest passing grade
F = Failure

To graduate, a student must have attained a weighted grade of at least D.

From September 1959 through June 1968

A = Excellent
B+
B = Degrees of Superior
C+
C = Degrees of Satisfactory
C-
D = Lowest passing grade
F = Failure

To graduate a student must have attained a weighted grade of at least D.

From September 1968 through June 2015

H = Work done in this course is significantly superior to the average level of performance in the School.
P = Successful performance of the work in the course.
LP = Work done in the course is below the level of performance which on the average is required for the award of a degree.

CR = Grade which indicates that the course has been completed satisfactorily without further specification of level of performance. All first-term required courses are offered only on a credit-fail basis. Certain advanced courses offered only on a credit-fail basis.
F = No credit is given for the course.

RC = Requirement completed; indicates J.D. participation in Moot Court or Barrister's Union.
EXT = In-progress work for which an extension has been approved.
INC = Late work for which no extension has been approved.
NCR = No credit given for late withdrawal from course or for reasons noted in term comments.

CRG = Credit for work completed at another school as part of an approved joint-degree program; counts toward the graded unit requirement.
T = Ungraded transfer credit for work done at another law school.
TG = Transfer credit for work completed at another law school; counts toward graded unit requirement.
*Provisional grade.

UNIVERSITY OF PENNSYLVANIA

OFFICE OF THE UNIVERSITY REGISTRAR PHILADELPHIA, PA 19104 - 6291

Margaret Kip
Acting University Registrar

RECORD OF WORK DONE

RECORD OF BRIAN J. LIU
ID NUMBER XXX-XX-3978 **BIRTHDATE:** 10/13/95
DATE OF ISSUE 06/01/18

[*]
[**AT THE UNDERGRADUATE LEVEL**]
[*]

*** * * * * * * * * * ACADEMIC PROGRAM * * * * * * * * * * ***

Admitted From: GEORGE WASHINGTON UNIV

School: ARTS & SCIENCES
Division: COLLEGE OF ARTS & SCIENCES
Degree Program: BACHELOR OF ARTS
Major: PHILOSOPHY POLITICS & ECONOMICS
Concentration: CHOICE & BEHAVIOR THEME

*** * * * * * * * * * DEGREES AWARDED * * * * * * * * * * ***

05-14-18 BACHELOR OF ARTS
SUMMA CUM LAUDE
WITH DISTINCTION IN PHILOSOPHY POLITICS & ECONOMICS

*** * * * * * * * * * * * HONORS * * * * * * * * * * * ***

Dean's List 2016-17 2017-18

*** * * * * UNIVERSITY OF PENNSYLVANIA COURSE WORK * * * * * ***

Fall 2016		**COLLEGE OF ARTS & SCIENCES**			
AFRC	420	The US and Human Rights: Policies and Practices	1.00	CU	A
CRIM	150	STAT FOR THE SOCIAL SCI. (Quantitative Data Analysis Course	1.00	CU	A
ECON	001	INTRO ECON MICRO	1.00	CU	A
ENGL	072	INTRO TO ASIAN AMER LIT	1.00	CU	A
MSCI	301	LEADERSHIP LAB 3	(0.00)	CU	A
MSCI	310	LEADERSHIP IN CONTACT	(2.00)	CU	A
PHIL	077	PHILOSOPHY OF LAW	1.00	CU	A-
		Term Statistics:	5.00	CU	GPA 3.94
		Cumulative:	5.00	CU	GPA 3.94
Spring 2017		**COLLEGE OF ARTS & SCIENCES**			
ECON	002	INTRO ECON MACRO	1.00	CU	B
MATH	170	IDEAS IN MATHEMATICS	1.00	CU	A+
MKTG	101	INTRO TO MARKETING	1.00	CU	A
MSCI	302	LEADERSHIP LAB 3	(0.00)	CU	A
MSCI	320	COMPLEX TEAM LEADERSHIP	(1.00)	CU	A
PHIL	228	PHIL OF SOCIAL SCIENCE	1.00	CU	A
PSYC	170	SOCIAL PSYCHOLOGY	1.00	CU	A+
		Term Statistics:	5.00	CU	GPA 3.80
		Cumulative:	10.00	CU	GPA 3.87

(No further entries this column)

*** * * * * UNIVERSITY OF PENNSYLVANIA COURSE WORK * * * * * ***
(Continued from previous column)

Fall 2017		**COLLEGE OF ARTS & SCIENCES**			
MSCI	401	LEADERSHIP 4 LABORATORY/PRACTICUM	(0.00)	CU	A
MSCI	410	DEVELOPING ADAPTIVE LEADERS	(1.00)	CU	A+
PPE	311	STRATEGIC REASONING	1.00	CU	B+
PPE	313	BEHAVIORAL ECON & PSYCH	1.00	CU	A
PPE	470	CAPSTONE: SOCIAL POLICY: ECONOMICS OF CRIME AND CORRUPTION: AN INTERDISCIPLINARY PERSPECTIVE	1.00	CU	A+
PSYC	001	INTRO TO EXP PSYCH	1.00	CU	A+
SAST	144	MODERN ISLAM AND POETRY	1.00	CU	A+
		Term Statistics:	5.00	CU	GPA 3.86
		Cumulative:	15.00	CU	GPA 3.87
Spring 2018		**COLLEGE OF ARTS & SCIENCES**			
GEOL	125	EARTH THROUGH TIME (Quantitative Data Analysis Course)	1.00	CU	A+
MSCI	402	LEADERSHIP LAB 4	(0.00)	CU	A+
MSCI	420	LEADERSHIP IN 21ST CENT	(2.00)	CU	A+
PPE	312	PUBLIC POLICY PROCESS	1.00	CU	A
PPE	402	RESEARCH IN PPE	1.00	CU	A
PPE	472	CAPSTONE: NETWORKS: NETWORK ANALYSIS	1.00	CU	A
PPE	482	CAPSTONE: PSYCHOLOGY: MODELLING CHOICE BEHAVIOR	1.00	CU	A
PPE	498	DIRECTED HONORS RESEARCH: SPATIO-TEMPORAL CORRELATES OF TERRORISM	1.00	CU	A+
PSYC	477	Political Psychology: Terrorism, Radicalization, Martyrdom and Revolution	1.00	CU	A+
		Term Statistics:	7.00	CU	GPA 4.00
		Cumulative:	22.00	CU	GPA 3.91
		Equivalent Credit:	18.00	CU	
		Total Credit:	40.00	CU	

(No further entries this column)

UNIVERSITY OF PENNSYLVANIA

OFFICE OF THE UNIVERSITY REGISTRAR PHILADELPHIA, PA 19104 - 6291

Margaret Kip
Acting University Registrar

RECORD OF WORK DONE

[*]
[AT THE UNDERGRADUATE LEVEL]
[*]

RECORD OF: BRIAN J. LIU
ID NUMBER: XXX-XX-3978 BIRTHDATE: 10/13/95
DATE OF ISSUE: 06/01/18

* * * * * * * * * PENN EQUIVALENT CREDIT * * * * * * * * * *

Advanced Placement Credit:	CHEM 91	1.00 CU
	ENGL FREE	1.00 CU
	HIST 42	1.00 CU
	PSYC001 WVD	0.00 CU
	WRIT 39	1.00 CU
External Transfer Credit:		
GEORGE WASHINGTON UNIV	CHIN 312	1.00 CU
	HIST 182	1.00 CU
	HIST 194	1.00 CU
	HIST 196	1.00 CU
	MGMT FREE	1.00 CU
	PHIL 1	1.00 CU
	PHIL 4	1.00 CU
	PHIL 76	1.00 CU
	PSCI FREE	1.00 CU
	PSCI FREE	1.00 CU
	PSCI FREE	1.00 CU
	PSCI FREE	1.00 CU
	PSCI 229	1.00 CU
	WRIT 39	1.00 CU
Total Penn Equivalent Credit Awarded:		18.00 CU

* * * * * * * * * * * * COMMENTS * * * * * * * * * * * *

Award in Academic Excellence in Philosophy, Politics and Economics; Award for Distinguished Research in Philosophy, Politics and Economics; College Alumni Society Prize in Philosophy,Politics and Economics.

* * * * * NO OFFICIAL ENTRIES BEYOND THIS POINT * * * * * *

TRANSCRIPT INTERPRETATION

GENERAL INFORMATION

Current official transcripts are printed on tinted paper; erasures will be apparent, and photocopies will say VOID across them. An Official University Signature will appear in the top right corner of the document in blue ink.

Course Numbering System

1-399	Undergraduate courses
400-499	Mixed courses primarily for Undergraduate students
500-599	Mixed courses primarily for Graduate students
600-989	Graduate courses
990-999	Graduate individual study (thesis/dissertation) courses

Course Units, Semester Hours and Credit Hours

Credit information appears to the right of the course information on the transcript.

Effective Spring 2014, a course unit should be converted to Semester Hours at a ratio of 1:4. Previous to Spring 2014 a course unit should be converted to Semester Hours at a ratio of 1:3.

A course unit (CU) generally represents one course that meets for 3 hours per week of class time, 4 hours of laboratory, or 5 hours of class time in beginning language courses, in a course that lasts for one term (semester).

A semester hour (SH) is defined as one hour per week of class time per term, or equivalent in other course-related activities.

Courses for which no credit is awarded appear with parentheses around their credit value, for example (1.00).

Penn Equivalent Credit is added to the credit total under the last term appearing on the transcript. It includes internal and external transfer credit, advanced placement credit, and credit by examination.

An H or GH preceding the course number indicates an honors course.

Free-form text included in current transcripts is concluded by ♦.

At the end of the transcript message NO OFFICIAL ENTRIES BEYOND THIS POINT appears.

Key to Grades

Term and Cumulative Averages

Not all schools use grade-point averages on the transcript. When averages appear, they are calculated according to this scale (except for the School of Dental Medicine):

A*	5.0	B+	3.3	C+	2.3	D+	1.3
A+	4.0	B	3.0	C	2.0	D	1.0
A	4.0	B-	2.7	C-	1.7	D-	0.7
A-	3.7					F	0.00

Key to Wharton Graduate Grades, Effective Summer 2006

A+	4.00	B+	3.33	C+	2.33	D+	1.33
A	4.00	B	3.00	C	2.00	D	1.00
A-	3.67	B-	2.67	C-	1.67	D-	0.67
						F	0.00

INTERPRETING GRADES

The various schools and divisions of the University use different grading systems. The first section of the transcript, ACADEMIC PROGRAM, includes school division, and degree information. Find the table that corresponds to that information below. Exceptions will be noted in the appropriate table.

Table 1

Annenberg School of Communications
Graduate Arts & Sciences
Graduate School of Education
School of Design, formerly known as Graduate School of Fine Arts
Ph.D. programs – All PhD programs and School of Engineering and applied sciences Graduate and executive masters programs, effective Spring, 2003 (see Table 3 for data prior to Spring 2003)
Law Students, when taking courses outside the Law School: otherwise see Table 5 & Table 6

A+,A,A-	Distinguished
B+,B,B-	Good (in Annenberg, B- = Unsatisfactory)
C+,C,C-	Unsatisfactory
D+,D	Poor
D-	Poor (not used for Grad. Ed. Annenberg)
F	Failure
P	Pass = A+ to D- (not used for Ph.D. Annenberg, Fine Arts-Harrisburg)
S	Satisfactory progress (not used for Law students)
U	Unsatisfactory (not used for Law students)
I	Incomplete
*	Permanent Incomplete (Ph.D. only)
W	Withdrew (Ph.D., Annenberg, Fine Arts-Harrisburg only)
NR	No grades reported for course
GR	No grade reported for student
AUD	Audit(not used for Law students)

INTERPRETING GRADES - Continued

Table 2

College Arts & Sciences, undergraduate
College of General Studies
College of Liberal and Professional Studies
Summer Sessions
School of Nursing, undergraduate (effective Fall, 1994)
Wharton Evening School (effective Fall, 1994)
Wharton Graduate School (effective Summer, 2006)
Wharton School, undergraduate (effective Fall, 1994)
School of Engineering and Applied Science, undergraduate

A+	Distinguished
A,A-	Excellent
B+,B,B-	Good
C+,C,C-	Average
D+,D	Below Average
F	Failure
P	Pass = A+ to D
S	Satisfactory progress
U	Unsatisfactory
I	Incomplete
II	Extended Incomplete (College Only)
I*	Permanent Incomplete
W	Withdrew
NR	No grades reported for course
GR	No grade reported for student
AUD	Audit
X	Academic Violation (CGS, Nursing & Engineering)

Table 3

School of Engineering and Applied Science – Undergraduates through Fall, 1996 (see Table 1 for data effective Spring, 1997)
Graduate Programs & Executive Management Programs through Fall, 2002 (see Table 1 for data effective Spring, 2003)
School of Nursing (through Summer, 1994) except for Ph.D. programs (see Table 1)

A	Distinguished
B	Good
C	Average (in graduate programs, C = Unsatisfactory)
D	Below Average (in graduate programs, D = Poor)
F	Failure
P	Pass = A+ to D
S	Satisfactory progress
U	Unsatisfactory
I	Incomplete
W	Withdrew
NR	No grades reported for course
GR	No grade reported for student
AUD	Audit
X	Academic Violation (undergraduate only)

Table 4

Dental School

A	Distinguished
B, B+	Good
C, C+	Average
E	Exempt
F	Failure
F/C	Fail then Pass – Repeated Exams
GR	No grade reported for student
NR	No grades reported for course
H	Honors
I	Incomplete
IW	Incomplete (Withdrew)
P	Pass

Table 5

Law School (through Summer, 1995) except for courses outside the Law school (see Table 1)

O	Outstanding	These grades apply to first year course in Professional Responsibility
S	Satisfactory	
U	Unsatisfactory	
DD	Distinguished	
E	Excellent	
G	Good	
Q	Qualified	
U	Unsatisfactory, with credit	
UNC	Unsatisfactory, no credit	
F	Failure	
P	Pass	
I	Incomplete	
W	Withdrew	
NR	No grades reported for course	
GR	No grade reported for student	
CR	Credit	

Table 6

Law School (effective Fall, 1995) except for courses outside the Law school (see Table 1)

A+	Distinguished
A, A-	Excellent
B+, B, B-	Good
C	Average
CR	Credit
F	Failure
FNC	Failure - No Credit
GR	No grade reported for student
H	Honors
I	Incomplete
NR	No grades reported for the course
P	Pass
S	Satisfactory Progress
W	Withdrew

Table 7

School of Social Policy and Practice (formerly known as School of Social Work, DSW) except DSW program (see Table 8) and Ph.D. program (see Table 1).

CR	Credit (Passed = B or better at graduate level)
F	Failure
NCR	Non-Credit course
I	Incomplete
W	Withdrew
WF	Withdrew, Failing
NR	No grades reported for course
GR	No grade reported for student
P	Pass

Table 8

School of Social Policy and Practice (formerly known as School of Social Work, DSW) (through Summer, 2002).

A	Distinguished
B	Good
C	Unsatisfactory
F	Failure
I	Incomplete
W	Withdrew (Social Work doctoral only)
WF	Withdrew Failing, (Social Work doctoral only)
NR	No grades reported for course
GR	No grade reported for student
AUD	Audit (Social Work doctoral only)

Table 9

School of Social Policy and Practice (formerly known as School of Social Work, DSW) (effective Fall, 2002).

A+	Distinguished
A,A-	Excellent
B+,B,B-	Good
C+,C,C-	Average
D	Below Average
F	Failure
CR	Credit (Passed = B or better)
NCR	Non-Credit course
I	Incomplete
GR	No grade reported for student
NR	No grades reported for course
W	Withdrew

Table 10

Wharton Evening School (through Summer, 1994)
Wharton School, undergraduate (through Summer, 1994)

A*	Distinguished
A	Excellent
B	Good
C	Average
D	Below Average
F	Failure
P	Pass = A* to C (Wharton courses only, not given in Evening School)
I	Incomplete
W	Withdrew
NR	No grades reported for course
GR	No grade reported for student
AUD	Audit
NC	No credit (not given in Evening School)
X	Academic Violation

Table 11

Wharton School, Executive MBA – (through Spring, 2006)
Wharton School, graduate except for Ph.D. programs (see Table 1)

DS	Distinguished
HP	High Pass
P	Pass
I	Incomplete
NR	No grades reported for course
GR	No grade reported for student
AUD	Audit
NC	No Credit

Office of the University Registrar • 150 Franklin Building, 3451 Walnut Street • Philadelphia, Pennsylvania 19104-6270 • (215) 898-6636

June 12, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I write in support of the application of Brian Liu, a rising 3L at Yale Law School, for a clerkship in your chambers. Brian grew up in an immigrant household in San Francisco's Chinatown and earned his B.A. summa cum laude in Philosophy, Politics, and Economics at the University of Pennsylvania, where he was selected for Phi Beta Kappa and received multiple prizes. After Penn, Brian joined the U.S. Army Reserve as a Military Intelligence Officer, spent three years working at Google, and then enrolled at Yale Law School. Here, he is an Articles & Essays Editor on the Yale Law Journal and Articles Editor on the Yale Journal of Law & Technology; an RA to two faculty and speechwriter for the Dean; a leader of several student organizations; and a successful student in a demanding clinic. Brian is extremely smart, focused, disciplined, and kind. He is already a talented legal researcher and writer, with a humble and warm demeanor. He will be an outstanding law clerk, and I recommend him with great enthusiasm.

In January 2022, as a first-year student, Brian joined the Veterans Legal Services Clinic, and he has stayed in the clinic for three semesters. In his first term, Brian and his student partners represented a U.S. Air Force veteran who participated in a clean-up of radioactive soil and dust after the United States accidentally dropped two hydrogen bombs near Palomares, Spain in 1966 (the bombs did not detonate, but they cracked open, leaking plutonium into the environment). Brian's client, now in his 70s, suffers from non-Hodgkin's lymphoma, but for years the Air Force and VA denied that he and all other veterans of the operation experienced meaningful radiation exposure. See Dave Philipps, Decades Later, Sickness Among Airmen After a Hydrogen Bomb Accident, N.Y.TIMES (June 19, 2016). An evidentiary hearing before the Board of Veterans Appeals (BVA) was calendared for the first few weeks of the semester. Brian dived in, working with our two expert witnesses – nuclear physicists – to finalize their written submissions and prepare them to testify. He also completed research on the legal standards for administrative subpoenas, which we had requested (but which are rarely approved by the BVA) and mooted his teammates for the hearing. The BVA reserved decision at the end of the hearing, and Brian took the lead in drafting our post-hearing brief. This was a major project that required him to master the administrative record and wrestle with technical questions under VA statutes and regulations. He did a marvelous job in all of this. And it worked. See In re Feeley, 2022 WL 16573133 (Bd.Vet.App. Sept. 21, 2022) (granting VA benefits based on radiation exposure at Palomares).

In a second, related matter, Brian represented Vietnam Veterans of America in legislative advocacy to compel VA to recognize the radiation exposure of Palomares veterans. For this, Brian developed legislation and briefing materials, traveled to Washington, DC, and lobbied legislative staff and members in the Senate and House in support of the proposed bill. This work paid off in a partial success: included in the PACT Act of 2022 was a provision recognizing the Palomares veterans in part. See Pub. L. No. 117-168 (Aug. 10, 2022), § 402. Not many 2Ls can point to federal legislation they helped draft and saw enacted into law!

Working with different students, Brian has also represented two deported veterans in their successful efforts to return to their homes and families in this country. Both veterans served honorably but were removed based on post-service criminal convictions, one to Mexico and the other to Haiti. In both cases, Brian helped author briefs in support of the veterans' naturalization applications, which required him to analyze and present immigration law, criminal law, and veterans law arguments. And in one case, a government background check turned up outstanding state warrants in New Mexico. Swiftly, Brian managed to research several questions of New Mexico criminal law and procedure; consult with local experts there; and, remarkably, persuade the county prosecutor to withdraw the warrant. Once that was done, the first client returned to the United States and succeeded on his naturalization application. See Marisol Chavez, Deported Army vet becomes naturalized US citizen, El Paso Matters (July 12, 2022). It was an extraordinary outcome, directly attributable to Brian's superb work.

But that was not all. In the second deported veteran case, Brian's client was paroled into the US nearly 30 years after he was deported to Haiti. Brian spent much of fall 2022 authoring a brief and preparing his client for what would be a complicated and intense naturalization interview in Florida. Here too, Brian had to synthesize voluminous material regarding the client's military, immigration, and criminal history; analyze the complexities of immigration and naturalization statutes; and boil it all down to a succinct, persuasive application and brief. Brian was patient and detail-oriented, chasing down every lead and ensuring that the briefing, and his client's presentation, addressed every potential issue. Brian flew to Florida to accompany his client in person to the high-stakes adjudication, even though Brian's own father had passed away after a long illness only shortly before. And again, Brian was successful: his client was naturalized as a U.S. citizen and will never again fear removal to Haiti, exiled from his family and community.

Brian has worked on one final matter in the clinic, which I have not supervised directly. He and different student partners represent Protect Our Defenders (POD), a group dedicated to ending rape and sexual assault in the military. In connection with an effort to compare military and civilian prosecutions of service members for crimes involving sexual violence, Brian managed numerous state and federal FOIA requests; analyzed the results in collaboration with ProPublica; and drafted and filed a federal FOIA complaint against the Department of Defense for failing to disclose responsive, non-exempt records. See Protect Our Defenders v. Department of Defense, No. 3:22-cv-01390-VAB (D.Conn.). The government moved to transfer venue, and Brian helped brief a successful memo in opposition. See id., Order, ECF No. 27 (Apr. 28, 2023) (denying motion to transfer venue). I

Michael Wishnie - michael.wishnie@yale.edu - _203_ 436-4780

understand from my colleague that his work was superb.

In all of his work, Brian has done a terrific job. He is smart, careful, and curious, with a huge capacity for research and writing. He has incisive analytic skills and a nuanced approach to legal argumentation. Brian is also a caring and patient collaborator with others. I have observed him interact with clients, colleagues, and allies. I have reviewed a very substantial amount of his writing. Brian will be a wondrous law clerk.

Sincerely,

/s/ Michael J. Wishnie

Michael J. Wishnie

Michael Wishnie - michael.wishnie@yale.edu - _203_ 436-4780

June 12, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I write to strongly recommend Brian Liu for a clerkship in your chambers.

Brian was a student in my International Law class in Spring 2022. For that class, he wrote his Supervised Analytic Writing paper on the Department of Justice's exercise of the International Emergency Economic Powers Act (IEEPA), a statute that grants the president broad latitude to declare an economic emergency, in the realm of civil and criminal asset forfeiture. The paper surveyed every IEEPA-related case ever reported and tracked the rise of IEEPA-predicated seizures and forfeitures against nation-state actors (North Korea, Iran, and Sudan in particular) prosecuted by US Attorney's Offices. The paper argued that the forfeited property could be applied as restitution to the victims of Russian state aggression by amending the enabling act for the US Victims of State Sponsored Terrorism Fund. The paper was innovative, comprehensive, well-researched, and well-written. He received an H on the paper and for the course. In addition, the paper received the Ambrose Gherini prize for the best paper written by a student during the 2021-2022 academic year in private or public international law—a competitive prize for which thirty or forty papers are commonly considered. This is truly exceptional for a 1L student, whose paper was judged against all other student papers written in the field that year.

Brian came to law school after working for three years as a legal assistant at Google, where he supported the launch of free public wifi pods in developing countries (e.g., Nigeria, Mexico, Indonesia, and India). At the same time, he worked as an intelligence officer in the U.S. Army Reserve, assigned to a unit supporting the Korean Peninsula. His military unit (the 368th Military Intelligence Battalion) participates annually in Ulchi Freedom Guardian and other military exercises focused on defending South Korea from a North Korean invasion. Brian has continued to serve with the 368th throughout law school, flying back to California once a month. (He had to turn down a Fulbright Fellowship to conduct research in China due to conflicts with his military security clearance.)

Brian is the first in his immediate family to attend high school. His parents immigrated to the United States from a farming community in Zhongshan, China. He was born and raised in San Francisco, spending most of his childhood in a Chinatown and a public housing project. His personal background helped inspire his decision to go to law school. His father was a janitor at a San Francisco courthouse, and his mother was a factory seamstress. As the first in his family to attend high school and the only one who speaks English, he grew up handling much of his parents' interactions with the government, including their applications for public housing, disability, welfare benefits, and their naturalization applications. Sadly, his father suffered end-stage renal disease and passed away in early December 2022, right before Fall 2022 exams. He flew back to California to make arrangements for his father's funeral and therefore did not perform as well on his exams that term as he had hoped.

After clerking, Brian wants to pursue a career as an Assistant U.S. Attorney working on national security cases. He hopes clerking will help him prepare to be an outstanding litigator.

For all these reasons, I believe that Brian will make a very strong law clerk. Please feel free to e-mail me at oona.hathaway@yale.edu or call me at 203-436-8969 with any questions you may have.

Sincerely,

Oona A. Hathaway
Gerard C. and Bernice Latrobe Smith Professor of International Law

June 12, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

It is my genuine pleasure to write this letter on behalf of Brian Liu. Because I write clerkship letters for so many students, I'm going to try my best in this first paragraph to signal just how unusually highly I think of Brian. Brian is dazzlingly impressive – stunningly smart and in my opinion one of the strongest legal writers in the rising 3L class. Brian also happens to be unimaginably hardworking, irresistibly likeable, and refreshingly unentitled and down-to-earth. I am writing to give him my highest possible recommendation. In fact, among the many impressive Yale Law students applying for a clerkship this year, Brian would probably be my own first or second choice.

Let me start with a word about Brian's unusual background. The son of a disabled janitor and a factory seamstress, Brian grew up impoverished in a housing project just outside of San Francisco's Chinatown. In particularly desperate periods, his family survived by rummaging through dumpsters and trash cans for recyclable goods and any valuables that could be resold. Because his parents spoke minimal English and neither had more than a middle school education, they relied on Brian for everything, from translating government notices to helping them apply for welfare and public housing benefits. Despite shouldering extraordinary responsibility from an early age – and with nothing but his own brilliance and determination to rely on – Brian has risen to the top at every juncture, always with an incredible attitude of optimism and gratitude. He was admitted to the best public magnet school in San Francisco and then to the University of Pennsylvania on a full scholarship, where he graduated *summa cum laude* and earned the College Alumni Society Prize, awarded to the most distinguished graduate in his department. As someone who has always been dedicated to public service, Brian then served as a military intelligence officer in the U.S. Army Reserve at a unit focused on countering North Korea. At Yale Law School, he has again risen to the top, making it on to the *Yale Law Journal* and then being selected for the Articles & Essays office – all while continuing his military reservist service and providing for his terminally-ill father (Brian's father passed away last winter). I mention all this not only because Brian's path to Yale Law contrasts sharply with that of his generally far more privileged classmates, but also because it speaks volumes about his character, work ethic, and values.

I know Brian very well, because he has taken two of my two courses – and hit it out the park in both. I first met him last fall, when he was one of about sixty students in my Advanced Contracts class, and he made his mark instantly. His weekly response papers were always a cut above everyone else's – searingly intelligent, beautifully written, and perfectly polished with never a single typo or Bluebooking mistake. This past spring, Brian also took my 110-person International Business Transactions class. Brian's final paper was dazzling – one of three best in the class. I especially appreciated how self-starting and low maintenance he was; whereas many of his classmates repeatedly wanted to "meet" for guidance and eventually asked for multiple extensions, Brian was one of the very few students to submit his paper early – again perfectly polished. Brian received an Honors in both my classes.

It's worth emphasizing that Brian is one of the strongest legal writers in his class, with some stunning successes under his belt. He wrote his Supervised Analytical Writing as a 1L – unusual in itself – on the subject of presidential emergency sanctions powers being used to pursue nation-state sanction violators. The paper surveyed every IEEPA-related case ever reported and tracked the rise of IEEPA-predicated seizures and forfeitures against nation state actors (North Korea, Iran, and Sudan in particular) prosecuted by U.S. Attorney's Offices, arguing that the forfeited property could be applied as restitution to the victims of Russian state aggression through amending the enabling act for the US Victims of State Sponsored Terrorism Fund. Brian's 1L paper ended up winning the school-wide Ambrose Gherini Prize for best paper in international law. Even more impressively, Brian applied his research on civil asset forfeiture – coupling it with his pre-law school background in technology and national security – to his summer internship at SDNY. Working under AUSA David Felton, Brian was assigned to work on *United States v. Zhong*, a case involving an unprecedented $3.4 billion of Bitcoins connected to the darknet platform, Silk Road. With minimal supervision, Brian contributed crucially to a forfeiture motion implicating novel Eighth Amendment issues regarding the largest seizure in Justice Department history, and, what remains today, the second largest seizure in Justice Department history.

On a more personal level, Brian is delightful – mature, quietly confident, perceptive, modest, respectful, loyal, honest, generous, and always upbeat with a wonderful sense of humor. Despite his friendly demeanor, he is as tough as nails, and will happily work around the clock, for many nights in a row. He is open-minded, brave, and refreshingly non-knee-jerk. He counts among his friends students from across the political spectrum, and he is the best of team players, liked and trusted by all his peers. Finally, Brian is one of the decent and responsible people I've ever met. In December 2022, his father passed away after a long battle with end-stage renal disease. Despite being in the middle of final exams, Brian flew home to organize his father's funeral, handle his family's financial affairs, and support his mother through her grief.

As I hope is clear, I believe Brian represents the very best of the Yale Law School. No one is more trustworthy or holds themselves to a higher standard, and I would stake my reputation on him. I very much hope you will consider giving him an interview – you won't be disappointed. And if you hire him, I am 100% certain he will end up being one of the best clerks you have ever had.

Please do not hesitate to contact me by email (amy.chua@yale.edu) or on my cell phone (203-668-6682) if you have any

questions. I would welcome the opportunity to be helpful in any way.

Thank you very much for your time and attention.

Sincerely yours,

Amy Chua
John M. Duff, Jr. Professor of Law
Yale Law School
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U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

June 11, 2023

BY OSCAR

Re: Clerkship application of Brian Liu

Dear Judge:

It is a true pleasure to write in support of Brian Liu's application for a clerkship. Last summer, after his 1L year, Brian worked as an intern in the U.S. Attorney's Office for the Southern District of New York. He was a superstar. Beyond just being smart and a clear writer—and he is both—Brian is poised, likable, upbeat, and humble, with an admirable commitment to public service.

To put my praise in context, over the past eight-and-a-half years in the U.S. Attorney's Office, in private practice, and as a law clerk, I have supervised or reviewed the work product of at least 12 law school interns. Of this talented, well-credentialed group—some of whom have gone on to clerk on the Second and D.C. Circuits, and S.D.N.Y. and E.D.N.Y.—Brian was probably the best intern I have worked with.

I do not say this lightly. I threw three difficult assignments at Brian, and he excelled each time. The first and most time consuming involved a panoply of novel issues surrounding the forfeiture, as subsequently located property under Rule 32.2(e) of the Federal Rules of Criminal Procedure, of over 51,350 Bitcoin. This Bitcoin was valued at nearly $3.4 billion at the time of seizure and well over $1 billion at the time of forfeiture. *See U.S. v. Zhong*, 22 Cr. 606 (PGG); *U.S. v. Ulbricht*, S1 14 Cr. 68 (LGS). Given the amount of money at stake, we could not afford to make a mistake. The second assignment centered on an open question in the Second Circuit regarding the statute of limitations of the aggravated identity theft statute, 18 U.S.C. § 1028A, under a unique fact pattern. The third research task involved a jurisdictional question where a defendant had a compassionate release appeal pending before the Second Circuit but later filed a habeas petition in the district court. In all three instances, Brian identified the relevant authorities, thoroughly analyzed all aspects of the issue, and displayed reliable instincts about both the likely correct answer and any practical impediments that might arise. His writing was crisp, well-structured, and easy-to-follow, particularly for someone with only one year of law school under his belt. I trust him.

I am not the only prosecutor who Brian impressed. An especially sharp colleague with high standards sang Brian's praises for legal research he contributed under intense time pressure throughout the hotly contested "Lottery Lawyer" trial, *U.S. v. Kurland*, 20 Cr. 306 (NGG). Brian thrived during the caldron of this high-profile trial. Given Brian's work ethic and unflappable nature, I am not surprised that he chose to spend his 2L summer at Wachtell.

One additional note: I spent a good deal of time with Brian last summer and not once did he bring up his remarkable background and family story. In fact, had I not sought this information from him as part of the recommendation-writing process, he never would have mentioned it to me. Despite having overcome true adversity and lived what is already an inspiring life that, frankly, is worthy of self-promotion, Brian is anything but a self-promoter. He wants his work to do the talking for him. It is refreshing to be around him.

In short, I recommend Brian to you highly and without reservation. He is easy to like and root for; I am pulling for him. I would be happy to speak with you further, my contact information is below.

Very truly yours,

/s/ David R. Felton

David R. Felton
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David.Felton@usdoj.gov

WRITING SAMPLE

Brian J. Liu
9 Tower Lane, Apt 437
New Haven, CT 06519
(415) 672-2729

I prepared the attached memorandum as an intern during my 1L summer at the U.S. Attorney's Office for the Southern District of New York. The memorandum was incorporated into a criminal forfeiture motion in *United States v. Zhong*, No. 1-22-cr-606 (PGG) (S.D.N.Y. Nov. 4, 2022), and as part of a letter motion in *United States v. Ulbricht*, No. 1-14-cr-68 (LGS) (S.D.N.Y. Nov. 7, 2022). The memorandum addressed whether the Government could seek forfeiture of $3.4 billion of seized Bitcoin by amending a preliminary forfeiture order issued six years prior.

I received permission from the Assistant United States Attorney in charge of the case, David R. Felton, to use this memorandum as a writing sample. The memorandum has been edited and adapted for use as a writing sample.

MEMORANDUM

TO: David R. Felton, Assistant United States Attorney, Southern District of New York

FR: Brian J. Liu, Intern

RE: Amending Preliminary Forfeiture Orders in *U.S. v. Zhong* and *U.S. v. Ulbricht*

Background and Statements of Fact

In September 2012, James Zhong exploited a technical vulnerability in the Silk Road online black market to steal 51,351.898 Bitcoins (the "Bitcoin Cache") from the marketplace. On June 3, 2015, District Judge Katherine B. Forrest for the Southern District of New York entered a Preliminary Forfeiture Order and Money Judgment (the "Preliminary Forfeiture Order") against the founder and operator of Silk Road, Ross William Ulbricht (a/k/a "Dread Pirate Roberts"). Preliminary Order of Forfeiture/Money Judgment, *United States v. Ulbricht*, No. 1-14-cr-68 (KBF) (S.D.N.Y. Jun. 3, 2015). The Preliminary Forfeiture Order contemplated forfeiture of "all funds passing through Silk Road's Bitcoin-based payment system" and ordered a money judgment of $183,961,921 (the "Money Judgment"). Sent'g Transcript at 92:15-16, *United States v. Ulbricht*, No. 1-14-cr-68 (KBF) (S.D.N.Y. Jun. 30, 2015).

Six years later, federal agents discovered the Bitcoin Cache on a computer motherboard hidden inside a popcorn tin in Zhong's basement. From the date of the Preliminary Forfeiture Order to the date of seizure, the Bitcoin Cache increased in value from approximately $11.6 million to $3.4 billion, an increase of 29,210%. Zhong has provided the Government with the password to his Bitcoin wallet and is complying with the Department of Justice. The Government now seeks forfeiture by amending the 2015 Preliminary Forfeiture Order in *Ulbricht* to forfeit the Bitcoin Cache discovered in 2021.

Questions Presented

(1) Can the Government amend the 2015 Preliminary Forfeiture Order to seek forfeiture of the Bitcoin Cache discovered six years later?

(2) Should the Government pursue forfeiture of the Bitcoin Cache as "directly forfeitable proceeds" or by enforcing the Ulbricht Money Judgment?

(3) Is the appreciation of directly forfeitable proceeds itself forfeitable?

(4) Does the Eighth Amendment's Excessive Fines Clause prohibit forfeiture where the asset has appreciated exponentially?

Short Answer

(1) Yes. Courts retain jurisdiction to amend preliminary forfeiture orders "at any time," pursuant to Federal Rule of Criminal Procedure 32.2(e). The Rules impose no time limit on amending preliminary forfeiture orders to include subsequently-located property.

(2) The Government should pursue forfeiture of the Bitcoin Cache as directly forfeitable property. Forfeiture of directly forfeitable proceeds and money judgments are distinct remedies. The former is used when the Government has possession of the directly-forfeitable asset, while the latter is a fallback procedure available in the absence of directly-forfeitable assets. As Zhong has surrendered his Bitcoin wallet, the Government should seek forfeiture of the Bitcoin Cache as directly-forfeitable proceeds under Federal Rule of Criminal Procedure 32.2(b)(1)(A).

(3) The Second Circuit has long recognized that appreciation is itself forfeitable if it is "derived from" or "traceable" to forfeitable property. This flows from the principle that wrongdoers should not benefit from the fruits of their criminal conduct. Circuit courts have long upheld forfeitures of appreciated stocks, brokerage accounts, and even lottery jackpots acquired using illicit funds.

(4) The proposed forfeiture of the Bitcoin Cache does not violate the Excessive Fines Clause. While the Supreme Court has invalidated "grossly disproportional" forfeitures in *Austin, Bajakajian*, and *Timbs*, this case is factually distinct from those precedents. Unlike *Bajakajian*, where the Court described the crime of failing to declare a sum of cash in excess of $10,000 at the airport as a mere "reporting offense," Zhong and Ulbricht were engaged in money laundering across a sprawling online black-market enterprise. And unlike *Austin* and *Timbs*, where the forfeited cars and real estate property were tangentially related to the substantive drug trafficking offense, the Bitcoin Cache was both the proceeds and the direct instrumentality of the money laundering offense.

Discussion

I. Federal Rule of Criminal Procedure 32.2(e) Permits Forfeiture of Subsequently Located Property

Preliminary forfeitures are a prudential measure intended to "reconcile the requirement that [courts] make the forfeiture order part of the sentence with the fact that in some cases, the government will not have completed its post-conviction investigation to locate the forfeitable property by the time of sentencing." 2009 Advisory Comm. to the Fed. R. Crim. P. Notes. "As soon as practical" after a verdict, the district court "*must* determine what property is subject to forfeiture . . . [and] whether the government has established the requisite nexus between the property and the offense. . . . If the court finds that property is subject to forfeiture, it must promptly enter a preliminary order of forfeiture." Fed. R. Crim. P. 32.2(b). If the Government is unable to identify all specific property subject to forfeiture or calculate a precise money judgment, Rule 32.2(b)(2)(C) provides that the court may describe property "in general terms" and note that "the order will be amended under Rule 32.2(e)(1) when additional specific property is identified or the amount of the money judgment has been calculated." Fed. R. Crim. P. 32.2(b)(2)(C).

Rule 32.2 clearly recognizes that in many cases, forfeitable property may not be uncovered until long after the preliminary forfeiture order is issued. Subdivision (e) of the Rule (the "Subsequent Amendment Rule") outlines a specific procedure for this event, providing for amendment of preliminary forfeiture orders to include subsequently located property. The Subsequent Amendment Rule states that "[o]n the government's motion, the court may at any time . . . amend an existing order of forfeiture to include property that is subject to forfeiture under an existing order of forfeiture but was located and identified after that order was entered." Fed. R. Crim. P. 32.2(e)(1). Once the government demonstrates that the subsequently-located property is subject to forfeiture, the court "*must* enter an order forfeiting that property, or *amend an existing preliminary or final order* to include it." Fed. R. Crim. P. 32.2(e)(2)(A) (emphasis added).

Recognizing the practical challenges of uncovering forfeitable property, the Federal Rules of Criminal Procedure do not impose a time limit on amending forfeiture orders. Rule 32.2(e)(1)(A) provides that courts retain jurisdiction to amend forfeiture orders "at any time" to include subsequently located property. Fed. R. Crim. P. 32.2(e)(1)(A). *See, e.g.*, *United States v. Percoco,* No. 16-CR-776 (VEC), 2019 WL 1593882, at *2 (S.D.N.Y. Apr. 15, 2019), *aff'd*, 13

F.4th 180 (2d Cir. 2021) (granting a forfeiture amendment under Rule 32.2(e)(1) to disgorge $320,000 in bribes seven months following the defendant's conviction)[1]; *United States v. Parker*, No. 3:02-0053, 2017 WL 1075098 (M.D. Tenn. Mar. 22, 2017) (granting forfeiture as substitute property of a 14-carat diamond ring discovered by federal agents in the defendant's briefcase twelve years after the defendant's conviction); *United States v. Saccoccia*, 62 F. Supp. 2d 539 (D.R.I. 1999) (granting forfeiture of 83 gold bars discovered in the defendant's mother's house six years following the defendant's conviction); *United States v. Hallinan*, 521 F. Supp. 3d 590, 595 (E.D. Pa. 2021) (granting forfeiture of a subsequently-located $2 million promissory note three years after the defendant's conviction).

The Rules also impose no limit to the number of times courts may amend their preliminary forfeiture orders. In complex criminal cases, courts often issue open-ended preliminary forfeiture orders against a broad category of forfeitable assets to facilitate the identification of specific forfeitable assets. In *BCCI Holdings*—involving the largest-ever bank failure and the longest-running forfeiture proceeding in the history of federal racketeering law at the time, the court granted a preliminary order of forfeiture against "all assets of the defendants found in the United States." *United States v. BCCI Holdings (Luxembourg, S.A.)*, 69 F. Supp. 2d 36, 43 (D.D.C. 1999). The generic description of the forfeited property in the preliminary order was intended to "facilitate the identification or location of property declared forfeited," which was spread out between 400 branches in 69 countries. *Id.* at 38, 44. As specific property fitting that description was located, the court amended the preliminary forfeiture order—at least five times during post-trial discovery—to forfeit subsequently located property. *See U.S. v. BCCI Holdings (Luxembourg), S.A. (Petition of Bank of California International),* 980 F. Supp. 522, 524 (D.D.C. 1997).

In summary, the Subsequent Amendment Rule provides the Government with broad leeway to forfeit subsequently located property pursuant to a preliminary forfeiture order. The six-year gap between the date of the Preliminary Forfeiture Order and when the Bitcoin Cache was eventually seized is no barrier to forfeiture. As demonstrated by the cases above, courts amend preliminary forfeiture orders with frequency, and with upwards of twelve years delay following a conviction.

[1] The Supreme Court reversed and remanded *Percoco* on other grounds in an opinion issued May 11, 2023, after this memorandum was written. *Percoco v. United States*, 143 S. Ct. 1130 (2023). The Court's decision does not affect the analysis in this memorandum.

II. The Government Should Seek Forfeiture Against the Bitcoin Cache as Directly Forfeitable Proceeds

Rule 32.2 provides two avenues for criminal forfeiture. The first is forfeiture against specific property ("Direct Forfeiture"), including for example "money on deposit in a particular bank account that is alleged to be the proceeds of a criminal offense, or a parcel of land that is traceable to that offense." 2000 Advisory Comm. to the Fed. R. Crim. P. Notes. The second is a money judgment ("Money Judgment"), an *in personam* ruling where the Government "determine[s] the amount of money that the defendant will be ordered to pay" if "the actual property subject to forfeiture has not been found or is unavailable." *Id.* The Rule is structured such that Direct Forfeiture serves as the primary avenue for forfeitures. If the Government has possession of the tainted asset and "has established the requisite nexus between the property and the offense," the Rule prescribes that the Government should proceed directly against that asset. Fed. R. Crim. P. 32.2(b)(1)(A). In the absence of the tainted asset, enforcement of money judgments is the appropriate fallback. *Id.*

This bifurcated forfeiture system comports with the common practice of courts in the Second Circuit. *See, e.g. United States v. Awad*, No. 06CR.600DLC, 2007 WL 3120907, at *2 (S.D.N.Y. Oct. 24, 2007), *aff'd*, 598 F.3d 76 (2d Cir. 2010) ("[M]oney judgments are routinely ordered in every kind of criminal case where (1) criminal forfeiture is authorized; and (2) where the directly forfeitable property is a sum of money that cannot be found at the time the order of forfeiture is entered."); *United States v. Kenner*, 443 F. Supp. 3d 354, 362 (E.D.N.Y. 2020) ("If the defendant lacks the assets to satisfy the order, the court can award the government a forfeiture money judgment."); *United States v. Persaud*, No. 1:05-CR-368, 2015 WL 13447268, at *6 (N.D.N.Y. July 22, 2015) ("[T]he traditional method [of enforcing a money judgment] is to use post-conviction discovery to locate substitute assets and then to move pursuant to Rule 32.2 (e) and the applicable forfeiture statute to forfeit the substitute asset to satisfy the money judgment in whole or in part.").

This system is also the common practice of courts in other jurisdictions. *See, e.g.*, *United States v. Freeman*, No. 6:06-CR-998-MGL, 2015 WL 13754212, at *3 (D.S.C. Jan. 27, 2015) ("[I]f property cannot be forfeited as directly traceable to the offense, it can be forfeited as a substitute asset and used to satisfy the money judgment.") (citing *United States v. Davis*, 177 F.

Supp. 2d 470 (E.D. Va. 2001)); *United States v. Dong,* 252 F. Supp. 3d 447, 458 (D.S.C. 2017), *aff'd sub nom. United States v. Vaxima, Inc.,* No. 17-4277, 2022 WL 595655 (4th Cir. Feb. 28, 2022) ("The court may order the forfeiture of substitute assets to satisfy a money judgment, where the money judgment represents the value of the proceeds of the offense that cannot be directly forfeited for one of the reasons set forth in section 853(p)(1)(A)."); *United States v. Rafael*, 282 F. Supp. 3d 407, 411 (D. Mass. 2017) ("Forfeiture money judgments are generally sought when assets that are directly forfeitable can no longer be found or have been dissipated, transferred, or sold, and the amount sought to be forfeited equals the proceeds the defendant obtained as a result of his or her offense conduct.").

Courts have rejected the use of money forfeiture judgments where directly forfeitable property is available to the Government. In *United States v. Rafael*, the defendant pled guilty to false labeling and identification related to mislabeling of caught fish in violation of the Lacey Act. 282 F. Supp. 3d 407, 408 (D. Mass. 2017). The Government sought and obtained forfeiture of several seized vessels and their related permits belonging to the defendant, which was valued at $28 million. *Id*. The court, explaining why forfeiture against the directly forfeitable property was appropriate over a money judgment:

> Forfeiture money judgments are generally sought *when assets that are directly forfeitable can no longer be found or have been dissipated, transferred, or sold*, and the amount sought to be forfeited equals the proceeds the defendant obtained as a result of his or her offense conduct. Here, *the government has located assets that are directly forfeitable*—the Vessels and Permits. The government does not seek to impose a forfeiture money judgment upon assets Rafael does not have and would have to pay into the future. *Id.* at 411 (emphasis added).

There are compelling policy reasons for preferencing forfeiture against directly forfeitable property over money judgments. As the Department of Justice's Asset Forfeiture Manual notes, "[f]orfeiting the 'tainted' property itself accomplishes th[e] goal [of deterring criminal activity by depriving criminals of property used in or acquired through illegal activities] more directly and clearly than forfeiting an agreed sum of money, because accepting cash in lieu leaves the 'tainted' property itself in the hands of those whose acts or failures to act made it forfeitable . . . [t]hus

Department policy requires the forfeiture of all available directly forfeitable property rather than a replacement sum of money, unless the interests of justice clearly favor forfeiture of the replacement sum of money." § [9-119.000] Asset Forfeiture Policy Manual, DOJML Comment 9-119.000.

Money judgment in Zhong's case is inappropriate because the Bitcoin Cache is clearly directly forfeitable property. The "requisite nexus" for directly forfeitable property is that the property was "involved in or traceable" to a violation of the money laundering statute. *See* Fed. R. Crim. P. 32.2(b)(1)(A); 18 U.S.C. § 982(a)(1); 18 U.S.C. § 1956. That nexus is satisfied solely by proving that the Bitcoin Cache had passed through Silk Road. *See* Sent'g Transcript at 92:15-21, *United States v. Ulbricht*, No. 1-14-cr-68 (KBF) (S.D.N.Y. Jun. 30, 2015) ("[A]ll funds passing through Silk Road's Bitcoin-based system were involved in the money laundering offense" as "[t]he Bitcoin-based system promoted and facilitated illegal transactions on Silk Road," "concealed the proceeds of those transactions," and "concealed the identities of and locations of users."). As Zhong's Bitcoin Cache were involved in the money laundering offense, it is directly forfeitable and there is no need to enforce the money judgment to forfeit the Bitcoin.

The defense may argue that *Rafael* is distinguishable from *Ulbricht* because the *Rafael* court never issued a money judgment against the defendant. In *Ulbricht*, Judge Forrest ordered both Direct Forfeiture and a Money Judgment of $183,961,921 against Ulbricht. Sent'g Transcript at 90-92, *United States v. Ulbricht*, No. 1-14-cr-68 (KBF) (S.D.N.Y. Jun. 30, 2015). Consequently, Ulbricht may argue that he lacked sufficient notice that they would be subject to forfeiture above $183,961,921. In other words, the question in this case is not whether the Government can enforce the Money Judgment against the Bitcoin Cache, but whether the $183,961,921 figure imposes an upper limit on the Government's ability to forfeit the Bitcoin Cache in full.

The Second Circuit has rejected this argument, finding in *United States v. Peters* that money judgment amounts do not limit the "overriding forfeiture request" for all property subject to the penalty. 257 F.R.D. 377, 381 (W.D.N.Y. 2009), *aff'd*, 732 F.3d 93 (2d Cir. 2013). In *Peters*, the government sought a $28 million forfeiture against a defendant convicted of bank fraud and other offenses. *Id.* at 382. In the indictment, the government placed the defendant on notice that it would seek forfeiture of "any property constituting, or derived from, any proceeds the defendants obtained, directly or indirectly" as the result of a conviction on Counts 1 through 4. *Id.* at 381. Count 5 further identified property subject to forfeiture as "including but not limited to . . . [a] sum

of money to be determined by the Court upon the conviction(s) aforesaid," along with any substitute assets "up to the value of" the sum of money determined by the Court. *Id.* at 382. The defendant challenged the action by arguing that in his indictment, the government limited its own forfeiture recovery by seeking substitute assets "up to the value of" the identified money judgments, which the government had estimated at $1.5 million in pre-trial proceedings. *Id.*

The court in *Peters* found that the money judgment was simply a "portion" of the "overriding" forfeiture request for "any property constituting or derived from" tainted proceeds. *Id.* at 383. The money judgment "modifies only a portion of the government's forfeiture request—the 'included, but not limited to' assets—and therefore does not negate the overriding notice included in the indictment." (citing *United States v. Rupley,* 706 F.Supp. 751, 754 (D. Nev. 1989) ("The Government should not be foreclosed from seeking forfeiture of all property subject to the penalty, simply because it listed some items with particularity."). Rather than limiting the scope of forfeitable property, "money judgments and substitute assets [are] just portions of what the government may seek by way of criminal forfeiture. That is, Peters's criminal forfeiture exposure includes, but is not limited to, the requested money judgments and substitute assets." *Peters*, 257 F.R.D. 377 at 383. Under that reasoning, the government was allowed to pursue a forfeiture amount that was eighteen times the amount identified in pre-trial proceedings.

As in *Peters*, the overriding forfeiture request in Ulbricht's indictment was for "any property" involved in or traceable to Ulbricht's crimes. Indictment at 10, *United States v. Ulbricht*, No. 1-14-cr-68 (KBF) (S.D.N.Y. Feb. 4, 2014). The Government requested money judgment and substitute assets "up to the value of the above-described forfeitable property" as an alternative, to the extent that directly forfeitable property "cannot be located" or "has been placed beyond the jurisdiction of the [c]ourt." *Id.* at 11. While Ulbricht's indictment omits the "includes but not limited to" qualifier that was in *Peters*, taken as a whole, the indictment clearly placed Ulbricht on notice that any Bitcoin traceable to Silk Road—including the Bitcoin Cache—would be subject to forfeiture.

III. Appreciation of Directly Forfeitable Property is Itself Forfeitable

The goal of criminal forfeiture is to strip the offender of the fruits of their criminal conduct. As the Second Circuit described in *United States v. Contorinis,* "[c]riminal forfeiture focuses on the disgorgement by a defendant of his 'ill-gotten gains.'" 692 F.3d 136, 146 (2d Cir. 2012)

(quoting *United States v. Kalish,* 626 F.3d 165, 170 (2d Cir. 2010)). By "separate[ing] the criminal from his profits," the Government "remov[es] the incentive others may have to commit similar crimes tomorrow." H.R. Rep. No. 106-192, at 5 (1999) (quoting testimony of Stefan Cassella, Assistant Chief of the Asset Forfeiture and Money Laundering Section of the Department of Justice, before the House Judiciary Committee in consideration of the Civil Asset Forfeiture Reform Act); *see also Contorinis*, 692 F.3d at 147. This "make[s] lawbreaking unprofitable for the law-breaker" and thus "deters subsequent fraud." *S.E.C. v. Contorinis,* 743 F.3d 296, 301 (2d Cir. 2014) (quoting *S.E.C. v. Cavanagh,* 445 F.3d 105, 117 (2d Cir. 2006)).

The Second Circuit has long recognized that appreciation of directly forfeitable property is itself forfeitable. The civil and criminal forfeiture statutes extend forfeiture to proceeds "derived from" and "traceable" to directly-forfeitable property. 18 U.S.C. §§ 981(a)(1)(C), 982(a)(2)(B). As the Second Circuit has held, appreciation "derives from" the underlying property under the meaning of the forfeiture statute. In *United States v. Kalish*, the Second Circuit found that $2.4 million of appreciated assets in an investment account was entirely forfeitable because it was "attributable to" and "derived from" the original $1.7 million of fraud proceeds. *United States v. Kalish,* No. 6-cr-656 (RPP), 2009 WL 130215, at *6 (S.D.N.Y. Jan. 13, 2009), *aff'd*, 626 F.3d 165, 168 (2d Cir. 2010). *See also United States v. Afriyie*, 929 F.3d 63, 66 (2d Cir. 2019) (in an insider trading case involving an appreciated brokerage account, finding that "forfeiture is not limited to the amount of funds acquired through illegal transactions in an insider-trading scheme; rather, forfeiture may extend to appreciation of those funds.").

Courts in the Fifth, Sixth, and Eighth Circuits have concurred. In the money laundering case of *United States v. Hawkey*, the Eighth Circuit reasoned that if a defendant "misappropriated $10,000 and purchased stock that appreciated in value to $30,000 at the time of forfeiture, [the defendant] would be required to forfeit the [entire] stock." 148 F.3d 920, 928 (8th Cir. 1998). Similarly, in an unpublished opinion in *United States v. Hill*, the Sixth Circuit affirmed the trial court's finding that 9,240 shares of stock that the defendant owned as a result of a stock split of the original 616 shares were entirely forfeitable, as the additional 8,624 shares were "directly traceable to the original shares involved in the money laundering conviction." 46 F. App'x 838, 839 (6th Cir. 2002) (unpublished) (internal quotation marks omitted).

In one particularly notable example, the Fifth Circuit upheld a decision finding that even lottery winnings purchased using tainted funds can be subject to forfeiture. In *United States v.*

Betancourt, the Fifth Circuit upheld the forfeiture of nearly $5.5 million of lottery winnings where the defendant had used $10 of his $76,000 illicit drug proceeds to purchase the ticket. 422 F.3d 240, 251 (5th Cir. 2005). While there was no evidence that the ten-dollar bill was directly obtained from drug proceeds, the trial court credited testimony that the defendant paid for his lottery ticket using money from a black bag where he was regularly observed placing his drug money. *Id.* at 243-44. That nexus was sufficient to show that the "appreciation" was traceable to the tainted proceeds.

IV. The Proposed Forfeiture of the Bitcoin Cache Would Not Violate the Excessive Fines Clause

The Proposed Forfeiture may be challenged on appeal on the basis that the magnitude of the forfeiture would violate the Eighth Amendment's Excessive Fines Clause. The Clause provides that "excessive fines [shall not be] imposed" as punishment for a criminal offense. U.S. CONST. amend. VIII. The Supreme Court held in *Austin v. United States* that criminal forfeiture "is a monetary punishment and, as such, is subject to the limitations of the Excessive Fines Clause." 509 U.S. 602, 602 (1993). Following *Austin*, the Court has reversed forfeiture orders in several instances where the forfeiture was found to be "grossly disproportional." *See, e.g., United States v. Bajakajian*, 524 U.S. 321, 322 (1998) (finding that a $357,144 cash forfeiture for failing to report foreign travel with over $10,000 in cash pursuant to 31 U.S.C. § 5316(a)(1)(A), violated the Excessive Fines Clause, as the statute imposed a $5,000 maximum fine). More recently, following remand and vacatur in the Supreme Court decision *Timbs v. Indiana*, 139 S. Ct. 682 (2019), the Indiana Supreme Court held that forfeiture of a $42,000 Land Rover for a $225 drug transaction was "grossly disproportionate" under *Bajakajian*, as the maximum available fine was $10,000. 169 N.E.3d 361, 377 (Ind. 2021).[2]

However, the Proposed Forfeiture of the Bitcoin Cache is distinguishable from these precedents in three key respects. First, the case of *Bajakajian* involved "solely a reporting offense . . . unrelated to any other illegal activities" 524 U.S. 321, 323 (1998). "The harm that respondent caused was also minimal . . . [h]ad his crime gone undetected, the Government would have been deprived only of the information that $357,144 had left the country." *Bajakajian*, 524 U.S. at 2038–2039. By contrast, Zhong committed a substantial fraud, breaching Silk Road to obtain the Bitcoin

[2] The Indiana Supreme Court's decision in *Timbs* followed the United States Supreme Court's decision in *Timbs v. Indiana*, where the Court incorporated the Excessive Fines Clause against the states. 139 S. Ct. 682 (2019).

Cache. He lavishly spent a considerable portion of the proceeds on luxury goods and powerboats, and obfuscated his ownership for years, depriving Silk Road victims of billions of dollars otherwise available for restitution. As *Bajakajian* held, "punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportional to the *gravity of the offense* that it is designed to punish." *Id.* at 322.

Second, unlike the defendants in *Timbs* and *Austin* whose otherwise-legitimate assets were forfeited as substitute property, Zhong had no valid pre-existing claim to the Bitcoin Cache. While it is plausible that the defendants in *Timbs* and *Austin*, whose forfeited property included a car, a mobile home, and an auto shop, purchased their property using untainted funds, Zhong stole his Bitcoins from a criminal enterprise whose assets are entirely subject to forfeiture. As the court established at Ulbricht's sentencing, "all funds passing through Silk Road's Bitcoin-based system were involved in the money laundering offense" as "[t]he Bitcoin-based system promoted and facilitated illegal transactions on Silk Road," "concealed the proceeds of those transactions," and "concealed the identities of and locations of users." Sent'g Transcript at 92:15-21, *United States v. Ulbricht*, No. 1-14-cr-68 (KBF) (S.D.N.Y. Jun. 30, 2015).

Third, unlike the forfeited assets in *Timbs*, *Austin*, and arguably in *Bajakajian*, the Bitcoin Cache was the direct instrumentality of the crime. As Judge Forrest notes in the *Ulbricht* sentencing, the Bitcoins were both the proceeds of the offense and the instrumentality of the offense, as the Bitcoin provided users with the anonymity necessarily to obscure their proceeds from authorities. Courts in the Second Circuit have held that the "involved in or traceable to" language of the criminal forfeiture statute extends to instrumentality of the offense. *See United States* v. *All Assets of G.P.S. Auto. Corp.*, 66 F.3d 483, 486 (2d Cir. 1995) (affirming forfeiture of all assets of corporation that "served as a conduit for the proceeds of the illegal transactions"); *United States* v. *Schlesinger*, 261 F. App'x 355, 361 (2d Cir. 2008) (summary order) (same); *In re 650 Fifth Ave.*, 777 F. Supp. 2d 529, 567 (S.D.N.Y. 2011) ("[T]he ability to forfeit a business entity which is used to facilitate the offense of money laundering is well established.") (internal quotation marks omitted); *United States v. Portillo,* No. 09-CR-1142 (LAP), 2019 WL 1949861, at *2 (S.D.N.Y. Apr. 17, 2019) ("In interpreting what funds are involved in the offense, courts in this district have embraced the facilitation approach, and the Court of Appeals has affirmed forfeiture of property as involved in money laundering transactions when it has served as

a conduit for the proceeds of the illegal transactions.") (internal quotation marks omitted) (citing *United States v. Prevezon Holdings, Ltd.*, 251 F. Supp. 3d 684, 698 (S.D.N.Y. 2017).

V. Conclusion

Zhong is not entitled to a windfall from funds that he had no business owning in the first instance. The Preliminary Forfeiture Order and the Rule 32.2(e) of the Federal Rules of Criminal Procedure both provide clear authority for seeking forfeiture of the Bitcoin Cache, and the Excessive Fines Clause is no barrier to forfeiture. The Government should pursue an amendment to the Preliminary Forfeiture Order through Rule 32.2(e) seeking Direct Forfeiture of the Bitcoin Cache.

Applicant Details

First Name	**Laura**
Middle Initial	**M.**
Last Name	**McFeely**
Citizenship Status	**U. S. Citizen**
Email Address	**LM3595@columbia.edu**
Address	**Address** Street **414 West 120th St., Apt. 502** City **New York** State/Territory **New York** Zip **10027** Country **United States**
Contact Phone Number	**9148747368**

Applicant Education

BA/BS From	**Dartmouth College**
Date of BA/BS	**June 2013**
JD/LLB From	**Columbia University School of Law** **http://www.law.columbia.edu**
Date of JD/LLB	**May 17, 2023**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Human Rights Law Review**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Foundation Moot Court (for all 1Ls)**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**No**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Seo, Sarah
as2607@columbia.edu
Purdy, Jedediah
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

Laura McFeely
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June 11, 2023

The Honorable John Walker, Jr.
United States Court of Appeals
Second Circuit
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I am a recent graduate of Columbia Law School, where I was an editor of the *Human Rights Law Review*. This fall, I will commence a one-year fellowship in appellate public defense. I write to apply for a clerkship in your chambers beginning in 2025. As a public defender who hopes to return to New England, I would be grateful for the opportunity to clerk in your chambers.

I would be humbled to clerk with a judge who has spent a career in public service, as you have. As a Public Interest/Public Service Fellow, I have committed to spending my career in the public interest, and I spent much of my time at Columbia doing pro bono work. I worked with formerly incarcerated people through the Paralegal Pathways Initiative, which helps to leverage the legal skills that people have gained during their incarceration in order to secure employment in the legal profession. I was also an Articles Editor for *A Jailhouse Lawyer's Manual*, which is a self-help legal guide designed for people in prison.

My year in appellate defense will further strengthen my research and writing skills. This fellowship, combined with my significant work experience before law school, would facilitate my adjustment to chambers and allow me to make strong contributions as your law clerk.

Enclosed please find my resumé, transcripts, writing sample, and letters of recommendation from Professors Maeve Glass ((212) 854-0073, mglass2@law.columbia.edu), Jedediah Purdy ((919) 660-3952, purdy@law.duke.edu), and Sarah Seo ((212) 854-4779, as2607@columbia.edu).

I would welcome any opportunity to speak with you. Thank you for your consideration. Please note that email is the best way to contact me, as I am currently out of the country.

Respectfully,

Laura McFeely

Laura McFeely

LAURA M. MᶜFEELY

414 W. 120th St., Apt. 502, New York, NY 10027
(914) 874-7368, lm3595@columbia.edu

EDUCATION

COLUMBIA LAW SCHOOL, New York, NY
J.D., received May 2023
Honors: Ruth Bader Ginsburg Prize (for outstanding academic achievement in all three years)
James Kent Scholar (for outstanding academic achievement, 2020–23)
Best in Class Award, Criminal Law (Professor Sarah Seo)
Max Berger '71 Public Interest/Public Service Fellow
Academic Scholar (for students with ambition to pursue legal academia)
Activities: Teaching Fellow for Constitutional Law (Professor Maeve Glass)
Human Rights Law Review—A Jailhouse Lawyer's Manual, Articles Editor
Human Rights Law Review, Staff Editor
Student Fellow for Constitutional Democracy Initiative
Health is Justice (pro bono project analyzing COVID compassionate release decisions)
Human Rights Institute 1L Advocates Program
Note: *Defining the Public: Administrative Rulemaking Requirements in the Carceral Context* (published in the *Columbia Human Rights Law Review*, Fall 2022)

DARTMOUTH COLLEGE, Hanover, NH
B.A. in History, *cum laude*, received June 2013
Honors: Jones Prize for Best Thesis in American History
James O. Freedman Presidential Scholar
High Honors in History
Rufus Choate Scholar 2012–13 (top 5% of grade point average)
Activities: Presidential Scholar Research Assistant for Professor Russell Rickford
Thesis: *"These People Are Out of Control": Media Portrayal of Black Communities during the Crack Cocaine "Epidemic" of the 1980s*

EXPERIENCE

CENTER FOR APPELLATE LITIGATION, New York, NY
Kirkland & Ellis NYC Public Service Fellowship September 2023 – September 2024
Will represent roughly ten clients in appeals of their felony convictions, including researching and writing appellate briefs, developing and maintaining relationships with clients, and conducting oral arguments in front of the Appellate Division, First Department. Caseload will include direct appellate work and, as appropriate, post-conviction litigation in criminal trial court, advocacy on behalf of survivors of domestic violence, innocence investigations, immigration-related work, impact litigation, and federal habeas work.

Criminal Appeals Extern September 2022 – December 2022
Reviewed trial record, researched issues, and co-wrote a brief for a criminal appeal on behalf of a person convicted of a felony in the Appellate Division, First Department.

LEGAL AID SOCIETY, Bronx, NY
Legal Intern, Criminal Defense Practice June 2022 – August 2022
Interviewed clients at arraignments and made bail arguments in court. Interviewed incarcerated client and drafted letter to the Board of Parole. Wrote memos on reasonable suspicion, DWIs, and youth offender status.

PARALEGAL PATHWAYS INITIATIVE, New York, NY
Member, Participant Recruitment and Mentorship Team September 2021 – May 2022
Assisted with training program at Columbia Law School for formerly incarcerated people to leverage the legal talents they gained while incarcerated in order to secure jobs in the legal profession. Advertised, interviewed, and selected participants for the course. Recruited and matched mentors in the legal profession with participants.

BRONX DEFENDERS, Bronx, NY
Legal Extern, Family Defense Practice September 2021 – December 2021
Drafted motions, reviewed discovery, researched legal arguments, communicated with clients and attorneys in other practices (immigration, criminal, and civil), observed hearings, and appeared in a criminal case.

FEDERAL DEFENDERS, Montgomery, AL
Legal Intern June 2021 – August 2021
Assisted the Trial and Capital Habeas Units. Wrote discovery memos and motion to compel in a 42 U.S.C. § 1983 case on behalf of a person at the execution-eligible stage. Researched a jury issue for a potential petition for certiorari and drafted a petition for a Fourth Amendment issue. Visited clients in jail and on death row and wrote internal client visit memos. Attended a trial, sentencings, and supervised release revocation hearings.

COLUMBIA LAW SCHOOL, New York, NY
Research Assistant to Professor Elizabeth Emens May 2021 – August 2021
Researched legislative history on racially restrictive covenants in property deeds, wrote a memo on sex and gender in scientific studies, and cite-checked journal article on the Americans with Disabilities Act.

CASE METHOD PROJECT, Harvard Business School, Boston, MA
Research Associate March 2018 – January 2020
Supported 400 high school teachers in using the case method to teach about American democracy and increase critical thinking and civic engagement. Created and executed data management strategies in order to scale the project and triple the number of teachers. Managed recruitment partnership with League of Women Voters.

INTERISE, Boston, MA
Senior Associate, Research & Communications January 2017 – March 2018
Researched and wrote paper on income inequality, the racial wealth gap, and how strengthening minority-owned small businesses can create jobs and wealth locally. Managed organization's production of reports and projects, produced external communications, and wrote applications for awards and speaking engagements.

Program Associate, Small Business Administration (SBA) November 2014 – January 2017
Managed support for 54 program managers in SBA's Emerging Leaders initiative, delivering Interise's curriculum to 900 small business owners annually. Created tools for recruiting in low-income communities. Conducted site visits and trainings, created pilot program for alumni meetings, analyzed data, and wrote reports.

SANFORD HEISLER, LLP, New York, NY
Legal Assistant July 2013 – August 2014
Assisted attorneys at plaintiff-side law firm specializing in employment discrimination. Drafted complaints and correspondence, managed court deadlines, administered class settlement, and conducted client intake interviews.

Columbia Law School

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CLS TRANSCRIPT (Unofficial)

05/26/2023 12:42:07

Program: Juris Doctor

Laura M McFeely

Spring 2023

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6905-1	Antidiscrimination Law	Johnson, Olatunde C.A.	3.0	A
L6425-1	Federal Courts	Funk, Kellen Richard	4.0	A
L6655-1	Human Rights Law Review		0.0	CR
L8296-1	S. Academic Scholars	Kraus, Jody	1.0	A
L6683-1	Supervised Research Paper	Seo, Sarah A.	1.0	CR

Total Registered Points: 9.0

Total Earned Points: 9.0

Fall 2022

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6238-1	Criminal Adjudication	Richman, Daniel	3.0	A
L6663-1	Ex. Criminal Appeals	Schatz, Ben A.; Zeno, Mark	2.0	A
L6663-2	Ex. Criminal Appeals - Fieldwork	Schatz, Ben A.; Zeno, Mark	2.0	CR
L6655-1	Human Rights Law Review		0.0	CR
L6359-1	Professional Responsibility in Criminal Law	Cross-Goldenberg, Peggy	3.0	A
L8296-1	S. Academic Scholars	Kraus, Jody	1.0	A
L8990-1	S. Current Issues in Civil Liberties and Civil Rights	Shapiro, Steven	2.0	B+
L6683-1	Supervised Research Paper	Seo, Sarah A.	2.0	CR

Total Registered Points: 15.0

Total Earned Points: 15.0

Spring 2022

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6109-1	Criminal Investigations	Livingston, Debra A.	3.0	A
L6655-1	Human Rights Law Review		0.0	CR
L6169-2	Legislation and Regulation	Judge, Kathryn	4.0	A-
L8296-1	S. Academic Scholars	Kraus, Jody	1.0	CR
L8819-1	S. Public Law Workshop [Minor Writing Credit - Earned]	Bulman-Pozen, Jessica; Johnson, Olatunde C.A.	2.0	A-
L6683-1	Supervised Research Paper	Purdy, Jedediah S.	2.0	A
L8517-1	Workshop on Facilitating Meaningful Reentry	Genty, Philip M.; Strauss, Ilene	2.0	CR

Total Registered Points: 14.0

Total Earned Points: 14.0

Fall 2021

Course ID	Course Name	Instructor(s)	Points	Final Grade
L8419-1	Abolition: A Social Justice Practicum	Harcourt, Bernard E.; Shukur, Omavi	2.0	A
L8419-2	Abolition: A Social Justice Practicum: Experiential Lab	Harcourt, Bernard E.; Shukur, Omavi	1.0	A
L6241-2	Evidence	Capra, Daniel	4.0	A
L6792-1	Ex. Bronx Defenders on Holistic Defense	Chokhani, Natasha; Cumberbatch, Shannon; Herrera, Gregory	2.0	A-
L6792-2	Ex. Bronx Defenders on Holistic Defense - Fieldwork	Chokhani, Natasha; Cumberbatch, Shannon; Herrera, Gregory	2.0	CR
L6655-1	Human Rights Law Review		0.0	CR
L6675-1	Major Writing Credit	Purdy, Jedediah S.	0.0	CR
L8296-1	S. Academic Scholars	Kraus, Jody	1.0	CR
L6695-1	Supervised JD Experiential Study	Genty, Philip M.	2.0	CR
L6683-1	Supervised Research Paper	Purdy, Jedediah S.	1.0	A

Total Registered Points: 15.0

Total Earned Points: 15.0

Spring 2021

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6223-1	Comparative Constitutional Law	Khosla, Madhav	3.0	A
L6108-4	Criminal Law	Seo, Sarah A.	3.0	A
L6679-1	Foundation Year Moot Court	Strauss, Ilene	0.0	CR
L6130-7	Legal Methods II: Building Legal Change: Moving Advocacy Outside of Court	Hechinger, Scott; Rodriguez, Alejo; Shanahan, Colleen F.	1.0	CR
L6121-8	Legal Practice Workshop II	Kosman, Joel	1.0	P
L6116-4	Property	Purdy, Jedediah S.	4.0	A
L6118-1	Torts	Merrill, Thomas W.	4.0	B+

Total Registered Points: 16.0

Total Earned Points: 16.0

Fall 2020

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6101-3	Civil Procedure	Genty, Philip M.	4.0	A
L6133-5	Constitutional Law	Glass, Maeve	4.0	A
L6105-3	Contracts	Emens, Elizabeth F.	4.0	A
L6113-4	Legal Methods	Briffault, Richard	1.0	CR
L6115-8	Legal Practice Workshop I	Kosman, Joel; Whaley, Hunter	2.0	HP

Total Registered Points: 15.0

Total Earned Points: 15.0

Total Registered JD Program Points: 84.0
Total Earned JD Program Points: 84.0

Best In Class Awards

Semester	Course ID	Course Name
Spring 2021	L6108-4	Criminal Law

Honors and Prizes

Academic Year	Honor / Prize	Award Class
2022-23	Ginsburg Scholar	3L
2022-23	James Kent Scholar	3L
2021-22	James Kent Scholar	2L
2020-21	James Kent Scholar	1L

Pro Bono Work

Type	Hours
Mandatory	40.0
Voluntary	32.0

DARTMOUTH COLLEGE

This certifies that Laura M. McFeely was admitted to Dartmouth College in Fall Term 2009 to the Class of 2013 as a candidate for the degree of Bachelor of Arts.

Meredith H. Braz, Registrar

Issued on April 21, 2014

Major: History with High Honors.
Minor: French
Student Status: A.B. awarded June 09, 2013. cum Laude.
Rufus Choate Scholar 2012-2013
Third Honor Group 2011-2012
Third Honor Group 2010-2011
James O. Freedman Presidential Scholar
Research Assistant 2011 Fall
Designated Presidential Scholar on completion of Honors Program, 2013 Spring

Term	Course	Course Title	Enr.	Med.	CC.	Gr.	Cit.
ADV	FREN003	College Board Adv Placement			0	EX	
	HIST000	College Board Adv Placement			1	CR	
	HIST000	College Board Adv Placement			1	CR	
	MATH003	College Board Adv Placement			1	CR	
	MATH008	College Board Adv Placement			1	CR	
	PHYS003	College Board Adv Placement			1	CR	
	PHYS004	College Board Adv Placement			1	CR	
	WRIT005	Local Placement Test			0	EX	
	T.Avg. 0.00	Cum. Avg. 0.00	Cum.CC. 6				
09F	GEOG017	Geopolitics/3rd Wrld Devel	53	[A-]	1	A-	
	HUM 001	The Classical Tradition	12	[A-]	1	A-	
	PSYC001	Introductory Psychology	115	[B+]	1	A	
	T.Avg. 3.78	Cum. Avg. 3.78	Cum.CC. 9				
10W	ECON001	The Price System	78	[B]	1	A-	
	HIST068	Hist N Africa/Arr Islam/Pre	17	[A-]	1	B+	
	HUM 002	The Classical Tradition	10	[A-]	1	A-	
	T.Avg. 3.56	Cum. Avg. 3.67	Cum.CC. 12				
10S	ASTR001	Exploration of Solar System	133	[B+]	1	B+	
	GEOG041	Gender,Space& Islam	31	[A-]	1	B	
	HIST006	Civil Rights in US in20th C	36	[B+]	1	A	
	T.Avg. 3.44	Cum. Avg. 3.59	Cum.CC. 15				
10F	BIOL002	Human Biology	148	[B+]	1	B+	
	FREN008	Exploring Fren Culture/La	12	[A-]	1	A-	
	FREN010	The Anatomy of Passion	19	[A-]	1	B+	
	T.Avg. 3.44	Cum. Avg. 3.56	Cum.CC. 18				

Term	Course	Course Title	Enr.	Med.	CC.	Gr.	Cit.
11W	Dartmouth Foreign Study Program Paris						
	FREN029	French Civilization:FSP	19	[A-]	1	A-	
	FREN030	Fren Literature:FSP	19	[A-]	1	A-	
	FREN031	The French Language:FSP	19	[A]	1	A	
	T.Avg. 3.78	Cum. Avg. 3.60	Cum.CC. 21				
11S	ENGL080	Creative Writing	12	[A-]	1	A	
	FREN024	19th C French Lit&Culture	13	[A-]	1	A-	
	HIST026	The Vietnam War	35	[B+]	1	A-	
	T.Avg. 3.78	Cum. Avg. 3.63	Cum.CC. 24				
11X	ENGL024	Shakespeare I	47	[A-]	1	A-	
	ENGL037	Victorian Literature II	25	[A-]	1	A-	
	HIST065	Mod Europe:20th Century	14	[B+]	1	A	
	T.Avg. 3.78	Cum. Avg. 3.65	Cum.CC. 27				
11F	FREN053	Death in the French Traditi	18	[A /A-]	1	A	
	HIST014	Am Indian Hist:P Contact 18	73	[B+]	1	A-	
	HIST036	Health Care In Am Society	58	[B+]	1	A	
	T.Avg. 3.89	Cum. Avg. 3.68	Cum.CC. 30				
12S	ENGL082	Creative Writing: Fiction	12	[A-]	1	A-	
	GOVT010	Quantit Political Analysis	31	[B+]	1	A-	
	HIST096	Africa in African-Amer Mind	14	[A-/B+]	1	A	
	T.Avg. 3.78	Cum. Avg. 3.69	Cum.CC. 33				
12F	GEOG050	Geographical Info Systems	28	[A]	1	A	
	HIST082	PopStruggle,PolChangeCentAm	14	[A-]	1	A-	
	HIST098	Honors Seminar	16	[A]	1	A	
	T.Avg. 3.89	Cum. Avg. 3.71	Cum.CC. 36				

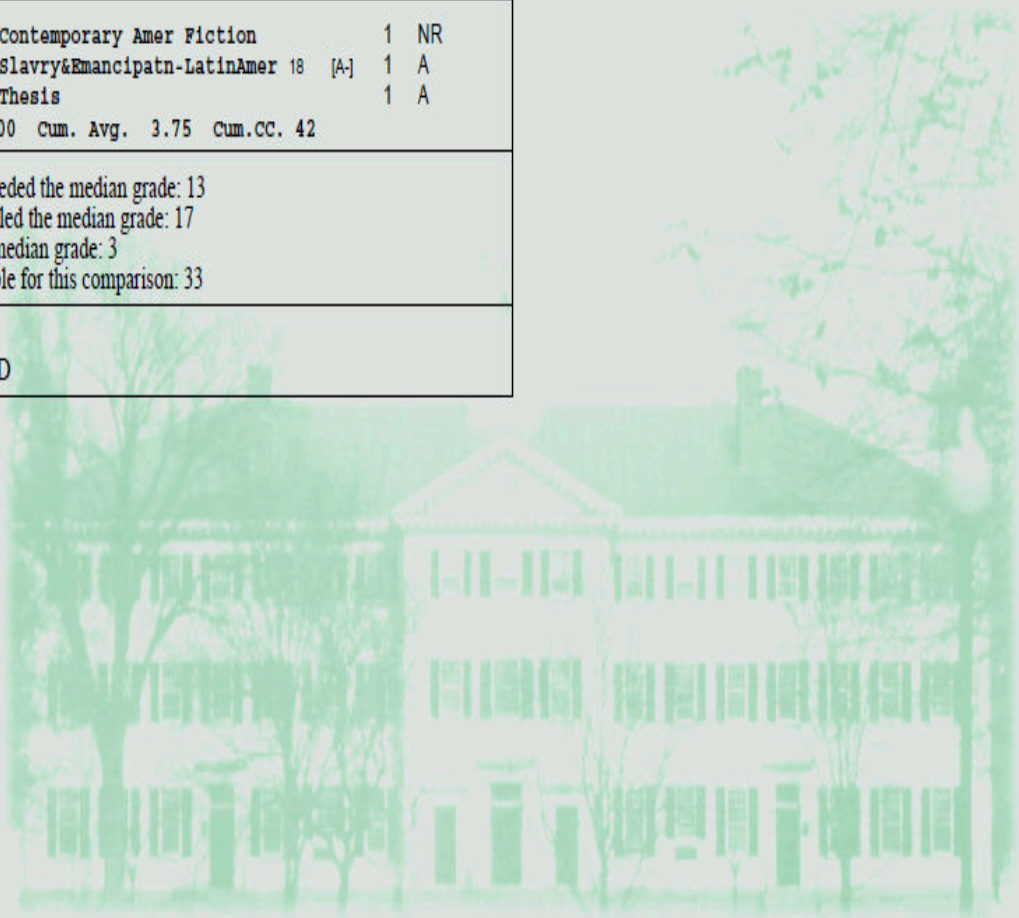
DARTMOUTH COLLEGE

Laura M. McFeely	Dartmouth College Transcript	Page 2	Meredith H. Braz, Registrar	Issued on April 21, 2014

Term	Course	Course Title	Enr.	Med.	CC.	Gr.	Cit.
13W	HIST067	Hist of Modern South Africa			1	A	
	HIST099	Thesis	13	[A]	1	A	
	WGST033	Cnstructing Black Womanhood	24	[B+/B]	1	A	
	T.Avg. 4.00 Cum. Avg. 3.74 Cum.CC. 39						
13S	ENGL048	Contemporary Amer Fiction			1	NR	
	HIST086	Slavry&Emancipatn-LatinAmer	18	[A-]	1	A	
	HIST099	Thesis			1	A	
	T.Avg. 4.00 Cum. Avg. 3.75 Cum.CC. 42						

Courses which exceeded the median grade: 13
Courses which equaled the median grade: 17
Courses below the median grade: 3
Courses taken eligible for this comparison: 33

END OF RECORD



Dartmouth Hall, built 1784

DARTMOUTH COLLEGE

DARTMOUTH COLLEGE

June 11, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I write to enthusiastically recommend Laura for a clerkship in your chambers. I know Laura well, first as an outstanding student in Criminal Law, earning the honor of Best in Class. Since her 2L year, she was my mentee as part of Columbia Law School's Academic Scholars Program. Finally, I supervised a research paper during her final year of law school. Through these connections, I've had numerous conversations with Laura and learned of her experiences that led her to law school, as well as her unwavering commitment to pursuing justice through advocacy, practice, and scholarship. She is hoping to clerk for you as part of that pursuit. I know that she will be a real asset to chambers. Laura is kind, professional, and intelligent, with unmatched research and writing skills.

Laura spent her post-1L summer interning with the Federal Defenders in Alabama. We had a conversation in the middle of that summer about the (three!) research questions that came out of her experiences. One of the topics in particular came from an especially astute observation: Laura was struck by the fact that all the corrections officers she met in Alabama were Black and that many criminal defendants represented by the Federal Defenders had previously worked in the military or as corrections officers themselves. Laura was interested in exploring how limited economic opportunities for Black people in Alabama – and the United States – have shaped, and have been shaped by, the prison industrial complex. If Laura one day decides to pursue these questions further, her research has the potential to complicate narratives that assume that state actors are white, ignoring the complexities of race and class. This can be groundbreaking work in the vein of James Forman's Pulitzer Prize-winning book Locking Up Our Own, which examined why Black leaders in the 1970s promoted tough-on-crime policies.

This is obviously a huge research topic, and so Laura wisely decided to tackle a more manageable, but equally important, topic for her Note, which was published in the Columbia Human Rights Law Review. Laura examined the tension of prisons as a site of heightened state power that lacks democratic governance. This is a brilliant framing that illuminates the contradictions in our carceral policies, and Laura's paper challenges us to think about how the methods of punishment should reflect democratic norms and, in the process, urges a renewed vision of democracy. The insights of this paper exceed those of many law review articles written by seasoned academics.

Rather than calling it a day after finishing her Note, Laura embarked on a second research pa-per, which she hopes to publish after graduation. Using two case studies from Massachusetts and Colorado, the paper explores how the states' Department of Corrections have avoided implementing legislative and policy changes to solitary confinement. Laura contributes real insights to the existing literature, which has focused on agency avoidance of judicial review, by examining whether and how legislatures can restrain executive agencies. I learned so much from supervising this paper. I also learned just how talented Laura is at legal research and writing, and how dedicated she is to pursuing scholarship that can make a real impact in the world.

From her pre-law school experiences to her law-school activities, Laura has demonstrated a commitment to fight for those most vulnerable in the criminal legal system through both practice and academic study. I'm excited about what Laura will accomplish in her career, and I consider myself lucky to have crossed paths with her. It's my pleasure now to recommend Laura to you. Please do not hesitate to reach out to me with any questions. I would be happy to be of further assistance.

Sincerely,

Sarah A. Seo
Professor of Law

Sarah Seo - as2607@columbia.edu

June 11, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

The first thing to know about Laura McFeely is that she has been an essentially perfect law student, earning an "A" grade in every classroom course but one. The second thing to know is that she is much more than her sterling academic record. She is deeply intellectually engaged and strongly committed to public service. She is already one of our very top students, a true standout, and I am confident that she will remain both superlative and superlatively interesting. I urge you to hire her, and am sure you'll be glad if you do.

I met Laura as a 1L student in Property. This was in the spring semester of an all-remote year, and everyone was tired and, in many cases, understandably grumpy. I came to know Laura, inside her Zoom box, as a student who was always visible and visibly engaged. Classroom exchanges showed her to be low-key with a humble vibe—not one of those students who put themselves forward insistently—but always in command of the material, and usually looking to take our discussion somewhere interesting and constructive. I wasn't surprised when her exam was one of the best in the class.

Laura asked me to supervise her student note, which I was very glad to do. She used to note to explore a ubiquitous set of doctrines and statutes—there appears to be a version in every state—that exclude jail and prison regulations from the procedures of public review, and feedback that are meant to anchor administrative regulation in public accountability. These procedures are widely seen as essential to the legitimacy of regulations ranging from environmental standards to health and safety rules to financial oversight: when the administrative state prepares to commands people, it must give a public accounting of the regulations that it will apply, and respond to criticisms and other feedback. How do carceral regulations avoid this requirement?

The answer, it turns out, is that incarcerated people are classified by legal doctrine in many states as being "not part of the public." The meaning of this striking classification is what Laura is exploring in her present note. What does this formula, which Laura has tracked across jurisdictions, reveal about the law and about membership in the United States polity? And, whatever we make of that large question, is the concept of "the public" being used here in a doctrinally consistent and appropriate way?

These are the kinds of analytically precise and intellectually creative engagements with the law that promise to make Laura both an effective lawyer and, ultimately, a pathbreaking scholar who can shine light on what has been obscure. In putting together the note, Laura did a tremendous amount of self-structured doctrinal research. Only when that was done did she draw it into her own arguments. Her respect for the legal material is particularly admirable in someone whose convictions about justice are very strong.

Laura has done all of this outstanding academic work while also externing with the famously excellent and intense Bronx Defenders and engaging in a variety of other service work, including leadership in our admirable student initiative to assist formerly incarcerated people in becoming paralegals. She has also been a teaching assistant for my colleague Maeve Glass—a high honor and a demanding role, entailing great responsibility for our students' training. I suppose that Laura developed the maturity to balance this range of commitments during her seven years of workplace experience after Dartmouth College (where she also shone): this is a person who knows how to manage her time, set priorities, and help an operation to run smoothly. It isn't every day that one encounters these capacities in a very top law student.

I'd be remiss if I didn't mention that Laura is a nice person. I always enjoy our conversations, and am consistently struck by Laura's way of combining humility with the highest level of achievement.

I am delighted to give Laura my strongest recommendation, without reservation. I hope you'll be able to hire her, and I know you will be glad if you do.

Sincerely,

Jedediah Purdy
William S. Beinecke Professor of Law

Jedediah Purdy - purdy@law.duke.edu - (212) 854-0593

June 11, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I write this letter in enthusiastic support of Laura McFeely's application for a clerkship in your chambers. I have had the privilege to work closely with Laura over the past two years. During this time, I have come to know Laura both as an exceptional law student in my Constitutional Law course as well as an excellent teaching assistant for the course this past spring. Throughout our relationship, I have been impressed with Laura's superb analytical and writing skills, as well as her unrivalled work ethic, collegiality, and innate kindness and compassion for others. An aspiring public defender and law professor who has received highest honors here at Columbia Law School, Laura will make a phenomenal law clerk.

In my Constitutional Law course, Laura wrote one of the very best final exams in the class, easily earning one of the only three "A" grades allotted under Columbia Law School's rigorous first-year curve. As I later relayed to Laura, her legal analysis was simply a joy to read. In clear and succinct prose, Laura sifted through two complex fact patterns based on recent cases and identified subtle issues of law that other students had missed. In analyzing these issues, Laura brought to bear a dazzling array of precedents, noticing the ambiguities in the doctrine before offering a reasoned conclusion based on the facts of the case. This elegant and rigorous legal analysis was consistent with the excellent memos that Laura had written throughout the course, including a superb analysis of the modes of constitutional interpretation deployed by Justice Story in Prigg v. Pennsylvania, as well as a thoughtful analysis of a hypothetical fact pattern that asked students to assess plausible formulations of the holding of *Gibbons v. Ogden*.

Owing to this exemplary performance in class, I was delighted when Laura agreed to serve as a teaching assistant for the course this past spring semester. Over the semester, I was constantly impressed by the thoroughness, professionalism, and collegiality that Laura brought to her role as a law teacher. In the discussion materials that she created for the weekly TA sessions, Laura presented each case in relation to the doctrines that came before it, while noting how advocates might formulate the holdings at different levels of generality. Laura also regularly offered helpful comments and feedback on the discussion materials that her fellow teaching assistants created. With a meticulous eye for detail, Laura once noticed a doctrinal mistake on a slide prepared by a fellow teaching assistant that she tactfully corrected. At the end of the semester, I was fortunate to be able to sit in on a class that Laura co-taught. It was truly inspiring to see Laura at the podium before a room of over forty students. Speaking with poise and confidence, Laura fielded questions from students with ease, while deftly adding nuance to the student's discussion of NFIB v. Sebelius. "Just remember," she remarked, "Chief Justice Roberts is the only person writing." Throughout, it was clear that the students respected and admired Laura for her brilliance and kindness.

In addition to possessing these truly exemplary skills, Laura is a warm and easy-going person who is a delight to work with and learn from. As a Public Interest/Public Service Fellow, Laura has a strong sense of the areas of the law that she is interested in pursuing as a public defender, but remains passionate and curious about new areas of the law. During the first semester at law school, for example, Laura regularly attended my small-group office hours to discuss the nuances of constitutional law cases. Laura's questions bespoke both a willingness to better understand the core of common law reasoning, as well as a curiosity in understanding how history relates to legal analysis. To offer just one example of Laura's kindness: during one of the first classes of the semester this past spring, I was having difficulty catching my breath as I endeavored to lecture through a mask. As I wondered whether I would be able to continue teaching before an audience of 120 students, Laura suddenly appeared at the podium with a bottle of water and a smile of encouragement.

In short: it has been one of the great joys of my time on the faculty to work with Laura. I have no doubt that she will be an excellent addition to your chambers. If I can be of any further assistance in your review of her application, please feel free to contact me.

Sincerely,

Maeve Glass

Maeve Glass - maeve.glass@law.columbia.edu - _212_ 854-0073

LAURA M. McFEELY
Columbia Law School J.D. ’23
(914) 874-7368
LM3595@columbia.edu

CLERKSHIP APPLICATION WRITING SAMPLE

This writing sample is a draft of a petition for a writ of certiorari from the U.S. Supreme Court on a Fourth Amendment search issue. I wrote it for the Federal Defenders for the Middle District of Alabama and provided it as a first draft to the attorneys. I was given this assignment as I was ending my summer internship and it demonstrates my ability to conduct research and write under time constraints. My supervisor, Mackenzie Lund, has given me permission to use this condensed and redacted version. This draft has not been edited by any other people. The bracketed portion indicates where I have summarized relevant facts.

Petition for Writ of Certiorari from the Supreme Court

QUESTION PRESENTED

In this case, law enforcement installed and monitored a sophisticated global positioning system ("GPS") tracking device on a confidential informant's vehicle to track a suspect by electronic, rather than visual, surveillance. The police did not seek a warrant. This Court held in *United States v. Knotts*, 460 U.S. 276, 285 (1983), that rudimentary beeper signals that augmented police's visual surveillance did not invade any legitimate expectation of privacy and therefore did not constitute a search under the Fourth Amendment. In *United States v. Jones*, 565 U.S. 400, 409 (2012), this Court held that installing and using a GPS tracking device on a car is a common-law trespass against the owner and therefore a search under the Fourth Amendment.

The question presented is that left unanswered by *Knotts* and *Jones*: is non-trespassory GPS tracking that is more invasive than a rudimentary beeper a search under the Fourth Amendment?

STATEMENT OF THE CASE

The case presents the question of whether the Fourth Amendment protects against warrantless non-trespassory global positioning system ("GPS") tracking that is quantifiably more invasive than a beeper and largely replaces, rather than augments, visual surveillance.

On February 2, 2019, Corporal Snow received a tip from a confidential informant ("CI-1") that Mr. John Smith planned to drive to Gilboa to buy methamphetamine. No record exists of this tip, nor were there any additional details about the seller or the address of the predicted pickup.

Corporal Snow's colleague at the City of Bethel Police Department, Officer Fisher, contacted a different confidential informant ("CI-2"). CI-2 had agreed to work with the police department only the day before, on February 1, when Officer Fisher found over 100 grams of

methamphetamine on her at a traffic stop. CI-2 said that she was familiar with Mr. Smith and would reach out to get more information. CI-2 called Officer Fisher back shortly thereafter and said that Mr. Smith had confirmed his plans, that he planned to buy 1.5 ounces in Gilboa that night, and that he asked to borrow her truck. No records or confirmation exist of this phone call, nor was it conducted in front of any officers.

CI-2 consented to Officer Fisher placing a GPS tracking device on her truck, which he attached magnetically behind the rear wheel on the driver's side. The GPS tracker was programmed to "sleep" when not in motion and to send a notification to the officer when it sensed motion again. The signal could be received by website or by smartphone application ("app"); Officer Fisher opted to monitor it using the app on his smartphone. The GPS tracker allowed him to see the vehicle's street address, rate of speed, longitude, latitude, altitude, and total distance travelled. He programmed the device to send this information every five seconds when it was in motion.

One or two hours later, around 3:30 or 4:30 pm on February 2, 2019, CI-2 told Officer Fisher that the truck was in Mr. Smith's possession, and Officer Fisher began monitoring its location in real time. He watched on his smartphone app as the truck reentered Bethel and stopped at an address on River Road. He and Corporal Snow drove to the address and confirmed that the truck was stopped there, although they did not see Mr. Smith or any other occupant of the truck.

[Officer Fisher followed the GPS tracker as the truck traveled to and from Gilboa the next day. Officer Fisher pulled over the truck upon its return. Mr. Smith was driving the car. Officer Fisher searched the car and found methamphetamine and two firearms. Mr. Smith was indicted on three counts: possession with intent to distribute a detectable amount of methamphetamine, in violation of 21 U.S.C. § 841(a)(1); using a firearm during and in relation to a drug trafficking

crime, in violation of 18 U.S.C. § 924(c)(1)(A); and possession of firearms by a convicted felon, in violation of 18 U.S.C. § 922(g)(1).]

Mr. Smith filed a motion to suppress evidence, in which he also moved for an evidentiary hearing and argued that, as a bailee, his Fourth Amendment rights were violated while he had possession of the truck. The police report implied that the police had followed Mr. Smith the entire time. [Quotations omitted.] The evidentiary hearing revealed that the police report had been misleading and that there was no visual surveillance until the very end of the tracking period.

The Magistrate Judge recommended that the motion to suppress be denied, although he noted key differences from existing Supreme Court precedent. First, the GPS tracking did not "augment" visual surveillance but almost entirely replaced it. *United States v. Smith*, No. 19-CR-0001, 2019 WL 9999999, at *5 (M.D. Ala. Aug. 1, 2019), *report and recommendation adopted as modified*, 100 F. Supp. 3d 1 (M.D. Ala. 2019), *aff'd*, No. 20-10000, 2021 WL 3333333 (11th Cir. June 1, 2021). Therefore, "it could be argued that law enforcement went beyond the 'mere visual surveillance' sanctioned by *Knotts*, *Karo*, and *Jones* to achieving the same results electronically, the constitutionality of which was expressly left unanswered in *Jones*." *Id.*

Second, he found the GPS tracking to be more similar to the cell-site location information ("CSLI") in *Carpenter v. United States*, 138 S. Ct. 2206 (2018), than the "rudimentary beeper information addressed in *Karo* or *Knotts*." *Id.* He also noted that the *Carpenter* opinion had "recognized that five Justices in *Jones* agreed that privacy concerns would be raised by GPS cell phone tracking or 'surreptitiously activating a stolen vehicle detection system,'" i.e., non-trespassory GPS tracking. *Id.* (citing *Carpenter*, 138 S. Ct. at 2215).

The Magistrate Judge ultimately concluded that, while the GPS tracking was more invasive, the duration (less than 24 hours) distinguished this from *Jones* and *Carpenter*. *Id.* at *6.

Mr. Smith objected to the recommendation on the grounds that a standard based on time duration was arbitrary. Doc. 50 at 6.

The District Court lamented that "district courts still possess scant and contradictory guidance as to whether *non-trespassory* GPS vehicle monitoring, as in this case of a borrowed truck, is an unreasonable search under the Fourth Amendment." *United States v. Smith*, 100 F. Supp. 3d 1, 2 (M.D. Ala. 2019), *aff'd*, No. 20-10000, 2021 WL 3333333 (11th Cir. June 1, 2021). The judge noted that "[t]he idea that constitutionality could hinge on the duration of a 'search' has puzzled a Supreme Court justice, several circuit judges, three district courts, two state supreme courts, and one of the nation's leading Fourth Amendment scholars," *id.* at 3–4 (footnotes omitted), but ultimately concluded that the facts were most analogous to *Knotts*, in part because of the 22-hour time period. *Id.* at 5. The District Court applied *Knotts* as precedent without conducting a *Katz* analysis.

After his motion to suppress evidence obtained from a warrantless search was denied, Mr. Smith entered into a conditional guilty plea and reserved his right to appeal the district court's ruling on his motion to suppress. Doc. 60 at 7. The district court accepted Mr. Smith's guilty plea, Doc. 70 at 15, and sentenced him to 140 months total. Doc. 80 at 40.

Mr. Smith timely appealed. Docs. 85, 86. The Eleventh Circuit affirmed the denial of the motion to suppress *per curiam*, finding that no reversible error had been shown. *United States v. Smith*, No. 20-10000, 2021 WL 3333333, at *3 (11th Cir. June 1, 2021). The appellate court agreed that the facts fell within *Knotts* and that the GPS tracking augmented the officers' sensory facilities because the officers could have gathered the information through visual surveillance. *Id.*

The petition for a writ of certiorari follows.

REASONS FOR GRANTING THE WRIT

I. This is a federal question, unresolved by *Jones*, for which lower courts lack guidance.

The main question in this case—whether the Fourth Amendment protects against warrantless non-trespassory GPS tracking—requires resolution in order to guide lower courts. Only this Court can resolve whether *Katz v. United States*, 389 U.S. 347 (1967) and *United States v. Jones*, 565 U.S. 400 (2012), provide any protection against invasive real-time GPS tracking when a trespass has not occurred. Only this Court can provide guidance as to how *Jones*, *Katz*, and *United States v. Knotts*, 460 U.S. 276 (1983), fit together.[1]

The *Katz* Court provided a two-part test for determining the extent of Fourth Amendment protection against warrantless searches: if the person had a subjective expectation of privacy, and society was prepared to accept it as reasonable, then a violation of that privacy was a search and required a warrant. *Katz*, 389 U.S. at 361 (Harlan, J., concurring). In *Jones*, this Court explained that the *Katz* test supplemented, but did not replace, the idea of physical trespass at the core of the Fourth Amendment. *Jones*, 565 U.S. at 409. The *Jones* Court held that the installation and monitoring of a GPS tracker on an individual's car was a search due to physical trespass without conducting a *Katz* analysis.

The facts in *Jones* left unresolved the question of how the *Katz* analysis would have turned out had issues of trespass-to-chattel not been at play. However, the *Jones* Court emphasized that

[1] The District Court described the issue in this case as "a Fourth Amendment quandary." *United States v. Smith*, 100 F. Supp. 3d 1, 9 (M.D. Ala. 2019), *aff'd*, No. 20-10000, 2021 WL 3333333 (11th Cir. June 1, 2021). *See also id.* at 11 ("[B]eginning with *Jones* in 2012 and continuing through *Carpenter* in 2018, the property notion of trespass has been quickened. It is getting harder and harder to tell the quick from the dead."); *id.* at 11 ("This Court is not the only one left in the lurch by the present state of the law."); *id.* at 11 ("Lest one thinks this lack of guidance is by accident, the Supreme Court noted last year in *Carpenter* that 'no single rubric definitively resolves which expectations of privacy are entitled to protection.'"); *id.* at 11 (noting that *Carpenter* did not offer much guidance, and "[a]nswers evade analysis. Consequently, one is 'left with two amorphous balancing tests, a series of weighty and incommensurable principles to consider in them, and a few illustrative examples that seem little more than the product of judicial intuition.'"); *id.* at 13 (Following *Carpenter*, "[c]ourts like this one are left to decide just how long is a piece of string.").

trespass was not the "exclusive test" and that "[s]ituations involving merely the transmission of electronic signals without trespass would *remain* subject to *Katz* analysis." *Jones,* 565 U.S. at 411.

The facts here—that the placement occurred while the truck was in the owner's possession, but the use of the GPS tracker occurred in petitioner's possession—pinpoint the difficulty of applying the holding of *Jones.* Justice Alito noted in his concurrence that, by holding that the installation and monitoring of the GPS tracker together constituted a search, "the Court's reasoning largely disregards what is really important (the *use* of a GPS for the purpose of long-term tracking)." *Jones,* 565 U.S. at 424 (Alito, J., concurring).[2]

The District Court found that no physical trespass had occurred and *Jones* thus did not govern this case. The District Court found the facts most analogous to *Knotts,* where this Court conducted a *Katz* analysis to conclude that law enforcement's warrantless use of a rudimentary beeper that transmitted a signal over a short range on public roads did not violate the respondent's reasonable expectation of privacy. *Knotts,* 460 U.S. at 281. The District Court found that, because the facts were most analogous to *Knotts,* "a full-scale *Katz* evaluation of these facts is not warranted." *Smith,* 100 F. Supp. 3d at 6.

The District Court reluctantly applied *Knotts*: "'It may be that achieving the same result [as extended visual observation] through electronic means, without an accompanying trespass, is an unconstitutional invasion of privacy,' *Jones,* 565 U.S. at 412, but neither the Supreme Court nor the Eleventh Circuit has yet held as much." *Smith,* 100 F. Supp. 3d at 6. The District Court

[2] *See also United States v. Knotts,* 460 U.S. 276, 286 (1983) (Brennan, J., concurring) (Justice Brennan questioned the idea that installing a beeper with the owner's consent before selling it to an "unsuspecting buyer" satisfied the Fourth Amendment and stated that he was "not at all sure that . . . there is a constitutionally significant difference between planting a beeper in an object in the possession of a criminal suspect and purposefully arranging that he be sold an object that, unknown to him, already has a beeper installed inside it.") (citation omitted).

was powerless to "extend new protections to new technologies" without precedent from a higher court. *Smith*, 100 F. Supp. 3d at 7.

The lower courts' rulings in this case hold troubling implications for future law enforcement activity. This warrantless tracking only comes to light where it has been successful and law enforcement wants to use the evidence it has gathered. The holdings imply that such GPS tracking would still not constitute a search had the police been wrong, either because no illegal activity ended up occurring or because the driver did not match the person they expected to see. If Smith had not been the person driving the car and the police had not pulled the truck over at the end of the 200-mile journey, no one besides the police and CI-2 would have ever known about the extensive information gathered about that person's travels.

The Court has suggested a distinction between short-term and long-term tracking, based on the intrusion into privacy that the latter entails.[3] But a temporal distinction cannot justify tracking that is so invasive as to qualify as a search.

II. Unlike in *Knotts*, the police abandoned any attempt at visual surveillance, and the device here therefore cannot be said to have "augmented" their natural sensory abilities.

The Supreme Court should issue a writ to resolve a question that lower courts face in applying *Knotts*. The *Knotts* Court reasoned that the rudimentary beeper augmented police officers' sensory capabilities, even though the police lost sight of the car for about an hour. But where, as here, the electronic surveillance replaced visual surveillance, can it be said that such technology is augmenting the police officers' sensory ability to conduct visual surveillance?

[3] "As with GPS information, the time-stamped [CSLI] data provides an intimate window into a person's life, revealing not only his particular movements, but through them his 'familial, political, professional, religious, and sexual associations.'" *Carpenter v. United States*, 138 S. Ct. 2206, 2217 (2018) (citing *Jones*, 565 U.S. at 415 (Sotomayor, J., concurring)).

In *Knotts*, law enforcement used a rudimentary beeper and had to stay within a short range to receive the signal. *Jones*, 565 U.S. at 429 n.10 (Alito, J., concurring).[4] When the following car lost the signal, the police had to deploy a helicopter to pick it up again. *Knotts*, 460 U.S. at 278.

The District Court in this case did its best to compare the facts to the original meaning of the Fourth Amendment.[5] But the analogy fails. Just like in *Jones*, it is "almost impossible" to think of Founding-era analogies to this type of surveillance. *Jones*, 565 U.S. at 420 (Alito, J., concurring). The GPS tracking device here allows police to gather information that is so detailed, precise, and accurate that there is no accurate analogy to Founding-era law enforcement.[6]

The District Court's characterization of the facts as most analogous to *Knotts* was at odds with that of the Magistrate Judge who presided over the evidentiary hearing. The Magistrate Judge found that the GPS tracking here, which did not necessitate any accompanying visual surveillance, was more similar to the CSLI data in *Carpenter* than the rudimentary beeper in *Knotts*, which could transmit a signal only within a short range and required accompanying visual surveillance.

The Eleventh Circuit found that the tracking device here "'augmented [the officers'] sensory faculties,'" just like the beeper in *Knotts*. *Smith*, 2021 WL 3333333 at *3. But one cannot augment something that does not exist. The police were not using their sensory faculties except to look at an app on their phones. Unlike *Knotts*, there was no attempt to simultaneously follow the vehicle via visual surveillance. The officer watched an application on his smartphone, went to bed, and resumed looking at the car's progress on his phone in the morning.

[4] In *United States v. Karo*, 468 U.S. 705 (1984), this Court clarified that the installation of a beeper did not infringe any Fourth Amendment interests. 468 U.S. at 713.
[5] "If a constable in 1789 received consent to exchange the wheels on a stagecoach with ones that leave a distinctive marking on the road before the coach was to be borrowed by a smuggler, he or she could wait hours before following the tracks to his target." *Smith*, 100 F. Supp. 3d at 1.
[6] For example, the trip in this case did not occur on the expected day, but the police did not have to adjust their surveillance.

The *Knotts* Court held that "[a] person travelling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another." *Knotts*, 460 U.S. at 281. Anyone who "wanted to look" could see where a driver travelled, stopped, and exited the vehicle. *Id.* But the electronic surveillance here is different in kind, not in degree. Law enforcement did not try to follow the car or to conduct visual surveillance. There is no chance for a car to even notice he or she is being followed. Even the most expert police officer might be spotted while doing visual surveillance. That would *never* happen while doing electronic surveillance via GPS tracking.

In addition, the recent opinion in *Carpenter* pointed out that the holding in *Knotts*, that there is *no* reasonable expectation of privacy on public roads, may not be a bright-line rule. The *Carpenter* Court noted that in *Jones*, "five Justices agreed that longer term GPS monitoring of even a vehicle traveling on public streets constitutes a search . . . . It is about a detailed chronicle of a person's physical presence compiled every day, every moment, over several years." *Carpenter v. United States*, 138 S. Ct. 2206, 2220 (2018).

It is possible that, "[i]n circumstances involving dramatic technological change, the best solution to privacy concerns may be legislative." *Jones*, 565 U.S. at 429 (Alito, J., concurring). But in the absence of legislative action, the Court should apply Fourth Amendment doctrine and give the lower courts guidance.

Police officers should have to get a warrant so that there is some external knowledge or monitoring of law enforcement's use of GPS tracking devices. Law enforcement should not be allowed to self-regulate, without any check from another branch, "a tool so amenable to misuse, especially in light of the Fourth Amendment's goal to curb arbitrary exercises of police power."

Jones, 565 U.S. at 416 (Sotomayor, J., concurring). Restraint must be imposed by the judicial branch, not by the agents themselves.[7]

CONCLUSION

For the above reasons, this Court should grant this petition for writ of *certiorari*.

[7] "In the absence of [judicial] safeguards [imposed by a warrant], this Court has never sustained a search upon the sole ground that officers reasonably expected to find evidence of a particular crime and voluntarily confined their activities to the least intrusive means consistent with that end." *Katz*, 389 U.S. at 356–57.

Applicant Details

First Name	**Joshua**
Middle Initial	**G.**
Last Name	**Metzger**
Citizenship Status	**U. S. Citizen**
Email Address	**jmetzger@jd24.law.harvard.edu**
Address	**Address** Street **1648 Massachusetts Avenue #35** City **Cambridge** State/Territory **Massachusetts** Zip **02138** Country **United States**
Contact Phone Number	**(973) 901-0539**

Applicant Education

BA/BS From	**Georgetown University**
Date of BA/BS	**May 2021**
JD/LLB From	**Harvard Law School** **https://hls.harvard.edu/dept/ocs/**
Date of JD/LLB	**May 23, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Harvard International Law Journal, Managing Editor** **Harvard Human Rights Journal, Assistant Managing Editor**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Ames Moot Court Competition**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Minow, Martha
minow@law.harvard.edu
617-495-4276

Modirzadeh, Naz
nmodirzadeh@law.harvard.edu
617-495-1066

Murphy, Sean
smurphy@law.gwu.edu
(703) 893-6522

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Joshua G. Metzger
1648 Massachusetts Avenue #35, Cambridge, MA 02138
jmetzger@jd24.law.harvard.edu | (973) 901-0539

June 12, 2023

The Honorable John M. Walker, Jr.
United States Court of Appeals for the Second Circuit
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510

Dear Judge Walker:

I am writing to apply for a clerkship in your chambers for the 2025-2026 term. I am a rising third-year student at Harvard Law School, and I plan to bring one year of litigation practice in New York with me into a clerkship.

I believe my expertise in legal research, writing, and analysis would make me an effective addition to your chambers. From my three research assistant positions and as the Managing Editor of the *Harvard International Law Journal*, I have embraced a thoughtful approach to legal questions, exercised consistent attention to detail, and communicated complex ideas in clear and succinct language. Likewise, alongside a traditional course of legal study and substantive training at the Department of Justice and Skadden, my background in international law has enabled me to develop a cross-disciplinary perspective on theories of adjudication. Serving as a clerk and contributing to your important work would be an ideal way to apply these skills and insights.

Attached please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be separately receiving letters of recommendation from the following professors:

- Martha Minow, Harvard Law School, minow@law.harvard.edu, 617-495-4276
- Naz Modirzadeh, Harvard Law School, nmodirzadeh@law.harvard.edu, 617-384-0361
- Sean Murphy, George Washington Univ. Law School, smurphy@law.gwu.edu, 202-994-8763

I would welcome any opportunity to interview with you. Thank you for your time and consideration.

Sincerely,

Joshua G. Metzger

Joshua G. Metzger

1648 Massachusetts Avenue #35, Cambridge, MA 02138
jmetzger@jd24.law.harvard.edu | (973) 901-0539

EDUCATION

Harvard Law School, Cambridge, MA — *J.D. Candidate* May 2024
Honors: Dean's Scholar in Federalism and States as Public Law Actors; First Amendment; Legal Research and Writing
Activities: *Harvard International Law Journal*, Managing Editor
Harvard Human Rights Journal, Assistant Managing Editor
Professor Martha Minow, Research Assistant (civil society organizations and democratic governance)
Professor Noah Feldman, Research Assistant (compliance and enforcement incentives in international law)
HLS Program on International Law & Armed Conflict, Research Assistant (use of force and climate change)
Harvard Immigration Project, Director of Policy

Georgetown University, Washington, DC — *B.S. in Foreign Service* May 2021
Honors: *Summa cum laude* in International Politics with minor in Chinese
Phi Beta Kappa; Alpha Sigma Nu; Pi Sigma Alpha
Macdonald Prize in Korean Studies

EXPERIENCE

The World Bank, Office of Suspension and Debarment, Washington, DC — *Legal Intern* July 2023 – August 2023

Skadden, Arps, Slate, Meagher & Flom, New York, NY — *Summer Associate* May 2023 – July 2023
- Wrote a memo analyzing Ninth Circuit precedent on arbitrability and conflicting forum selection provisions.
- Developed case theory to assess breach of contract claims under arbitration in Hong Kong.

U.S. Department of Justice, Office of International Affairs, Washington, DC — *Europe & Eurasia Intern* Spring 2023
- Composed memos weighing the merits of foreign government requests for criminal extraditions.
- Formulated guidance about foreign property law to decide on the repatriation of alleged state-owned artwork.

United Nations Commission on International Trade Law, Incheon, South Korea — *Legal Affairs Intern* Fall 2022
- Analyzed case law in the South Pacific relating to arbitration, mediation, and cross-border insolvency.
- Crafted reports highlighting the impact of UNCITRAL legislative texts on economic legal harmonization.

Republic of Palau, **Office of the President**, Koror, Palau — *Legal Intern* July 2022 – August 2022
- Advised the government on effects of rising sea levels on its civilian protection obligations and maritime boundaries.
- Composed a memo identifying grounds for Palau to invoke state responsibility to address climate-related harms.

United Nations International Law Commission, Geneva, Switzerland — *Legal Intern for U.S. Member* May 2022 – July 2022
- Prepared a memo on the acceptance of general principles of law formed within the international legal system.
- Developed reports on the customary law basis for diplomatic recognition of states without territory.

The Woodrow Wilson Center, Washington, DC — *Kissinger Institute Research Assistant* Spring 2021
- Authored a publication on the strategic role of middle powers such as Canada in China-U.S. relations.

U.S. Department of Justice, Civil Rights Division, Washington, DC — *Federal Coordination and Compliance Intern* Fall 2020
- Drafted a legal memo on the viability of predictive risk algorithms in public welfare administration.
- Organized a data resources guide to determine the demographics of limited English proficiency populations.
- Presented strategies to remedy disparate impacts of COVID-19 reviewed with Biden administration officials.

Sterne, Kessler, Goldstein & Fox P.L.L.C., Washington, DC — *Legal Recruiting Intern* Summer 2019
- Calculated returns on investment for attorney hiring to discover the IP boutique's efficient recruiting channels.

New Jersey Office of the Public Defender, Morristown, NJ — *Investigations Intern* Summer 2018
- Prepared subpoenas for document production and drafted reports for attorneys on discovery investigations.

INTERESTS

- Family, daily meditation, pottery, tennis, World War II history, crossword puzzles, and the New York Yankees.

Harvard Law School

Date of Issue: June 2, 2023
Not valid unless signed and sealed
Page 1 / 2

Record of: Joshua Garrett Metzger
Current Program Status: JD Candidate
Pro Bono Requirement Complete

JD Program

Fall 2021 Term: September 01 - December 03

1000	Civil Procedure 5 Sachs, Stephen	P	4
1001	Contracts 5 Bar-Gill, Oren	P	4
1002	Criminal Law 5 Natapoff, Alexandra	H	4
1006	First Year Legal Research and Writing 5B Winsberg, Sarah * Dean's Scholar Prize	H*	2
1005	Torts 5 Goldberg, John	H	4

Fall 2021 Total Credits: 18

Winter 2022 Term: January 04 - January 21

1055	Introduction to Trial Advocacy Newman, Thomas	CR	3

Winter 2022 Total Credits: 3

Spring 2022 Term: February 01 - May 13

1024	Constitutional Law 5 Gersen, Jeannie Suk	P	4
2068	Employment Discrimination Churchill, Steve	H	2
1006	First Year Legal Research and Writing 5B Winsberg, Sarah	H	2
1003	Legislation and Regulation 5 Rakoff, Todd	H	4
1004	Property 5 Mack, Kenneth	P	4

Spring 2022 Total Credits: 16
Total 2021-2022 Credits: 37

Fall 2022 Term: September 01 - December 31

2035	Constitutional Law: First Amendment Feldman, Noah * Dean's Scholar Prize	H*	4
2973	Foundations of International Arbitration: Theory and Practice Sobota, Luke	H	2
8099	Independent Clinical - United Nations Commission on International Trade Law (UNCITRAL) Regional Centre for Asia and the Pacific Wu, Mark	CR	4
2296	Laws of War Modirzadeh, Naz	H	4
2156	Non-profit Organizations and Law Minow, Martha	H	2

Fall 2022 Total Credits: 16

Winter 2023 Term: January 01 - January 31

2507	State Constitutional Law Sutton, Jeffrey	H	2

Winter 2023 Total Credits: 2

Spring 2023 Term: February 01 - May 31

2048	Corporations Sanga, Sarath	H	4
2310	Federalism and States as Public Law Actors Halligan, Caitlin * Dean's Scholar Prize	H*	2
8099	Independent Clinical - U.S. Department of Justice, Office of International Affairs Modirzadeh, Naz	CR	4
2212	Public International Law Blum, Gabriella	H	4

Spring 2023 Total Credits: 14
Total 2022-2023 Credits: 32

Fall 2023 Term: August 30 - December 15

2033	Conflict of Laws Singer, Joseph	~	4
2086	Federal Courts and the Federal System Goldsmith, Jack	~	5
7000W	Independent Writing Minow, Martha	~	2
3240	International Law and Private Law: A Dialogue Goldberg, John	~	2
2129	The Comparative Law Workshop Alford, William	~	2

continued on next page

Harvard Law School

Record of: Joshua Garrett Metzger

Date of Issue: June 2, 2023
Not valid unless signed and sealed

3500	Writing Group: Public Values Conflicts: Constitutional Law, or Education Law, or Social Media Regulation Minow, Martha	~	1
	Fall 2023 Total Credits:		16
	Winter 2024 Term: January 02 - January 19		
2169	Legal Profession: Government Ethics - Scandal and Reform Rizzi, Robert	~	3
	Winter 2024 Total Credits:		3
	Spring 2024 Term: January 22 - May 10		
2000	Administrative Law Vermeule, Adrian	~	4
	Spring 2024 Total Credits:		4
	Total 2023-2024 Credits:		23
	Total JD Program Credits:		92

End of official record

HARVARD LAW SCHOOL
Office of the Registrar
1585 Massachusetts Avenue
Cambridge, Massachusetts 02138
(617) 495-4612
www.law.harvard.edu
registrar@law.harvard.edu

Transcript questions should be referred to the Registrar.

~~~~~~

In accordance with the Family Educational Rights and Privacy Act of 1974, information from this transcript may not be released to a third party without the written consent of the current or former student.

~~~~~~

A student is in good academic standing unless otherwise indicated.

Accreditation

Harvard Law School is accredited by the American Bar Association and has been accredited continuously since 1923.

Degrees Offered

J.D. (Juris Doctor)
LL.M. (Master of Laws)
S.J.D. (Doctor of Juridical Science)

Current Grading System

Fall 2008 – Present: Honors (H), Pass (P), Low Pass (LP), Fail (F), Withdrawn (WD), Credit (CR), Extension (EXT)

All reading groups and independent clinicals, and a few specially approved courses, are graded on a Credit/Fail basis. All work done at foreign institutions as part of the Law School's study abroad programs is reflected on the transcript on a Credit/Fail basis. Courses taken through cross-registration with other Harvard schools, MIT, or Tufts Fletcher School of Law and Diplomacy are graded using the grade scale of the visited school.

Dean's Scholar Prize (*): Awarded for extraordinary work to the top students in classes with law student enrollment of seven or more.

Rules for Determining Honors for the JD Program
Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.
May 2011 - Present

Summa cum laude	To a student who achieves a prescribed average as described in the Handbook of Academic Policies or to the top student in the class
Magna cum laude	Next 10% of the total class following *summa* recipient(s)
Cum laude	Next 30% of the total class following *summa* and *magna* recipients

All graduates who are tied at the margin of a required percentage for honors will be deemed to have achieved the required percentage. Those who graduate in November or March will be granted honors to the extent that students with the same averages received honors the previous May.

Prior Grading Systems

Prior to 1969: 80 and above (A+), 77-79 (A), 74-76 (A-), 71-73 (B+), 68-70 (B), 65-67(B-), 60-64 (C), 55-59 (D), below 55 (F)

1969 to Spring 2009: A+ (8), A (7), A- (6), B+ (5), B (4), B- (3), C (2), D (1), F (0) and P (Pass) in Pass/Fail classes

Prior Ranking System and Rules for Determining Honors for the JD Program
Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.
Prior to 1961, Harvard Law School ranked its students on the basis of their respective averages. From 1961 through 1967, ranking was given only to those students who attained an average of 72 or better for honors purposes. Since 1967, Harvard Law School does not rank students.

1969 to June 1998	General Average
Summa cum laude	7.20 and above
Magna cum laude	5.80 to 7.199
Cum laude	4.85 to 5.799

June 1999 to May 2010
Summa cum laude General Average of 7.20 and above (exception: *summa cum laude* for Class of 2010 awarded to top 1% of class)

Magna cum laude	Next 10% of the total class following *summa* recipients
Cum laude	Next 30% of the total class following *summa* and *magna* recipients

Prior Degrees and Certificates
LL.B. (Bachelor of Laws) awarded prior to 1969.
The I.T.P. Certificate (not a degree) was awarded for successful completion of the one-year International Tax Program (discontinued in 2004).

Record of: Joshua Garrett Metzger
ID: 841183767

GEORGETOWN UNIVERSITY
OFFICE OF THE UNIVERSITY REGISTRAR
WASHINGTON, D.C. 20057
(202)687-4020

Send To: **Joshua Metzger**
Parchment DocumentID: TWSFWVBQ

Date of Birth: 12-Dec-****

Course Level: Undergraduate

High Schools Attended:
PINGRY SCHOOL
MARTINSVILLE NJ

Degrees Awarded:
B.S. in Foreign Service May 22, 2021
School of Foreign Service
Major: International Politics
Minor: Chinese
Concentration: Law
Degree GPA: 3.970
Honors: Summa Cum Laude

Transfer Credit:
Advanced Placement

Principles of Biology	4.00
US Political Systems	3.00
Calculus I	4.00
Calculus II	4.00
Writing and Culture	3.00
School Total:	18.00

Language Proficiency: Chinese, Fall 2019

Entering Program:
School of Foreign Service
B.S. in Foreign Service
Major: International Affairs

Subj	Crs	Title	Crd	Grd	Pts	R
Fall 2017						
CHIN	111	Intens Second Lev Chinese I	6.00	A	24.00	
ECON	001	Econ Principles Micro	3.00	B+	9.99	
INAF	100	Prosem: Development of India	3.00	A	12.00	
THEO	001	The Problem of God Second Honors	3.00	A	12.00	
Spring 2018						
CHIN	112	Intens Second Lev Chinese II	6.00	A	24.00	
ECON	002	Econ Principles Macro	3.00	A	12.00	
INAF	008	Map of the Modern World	1.00	S	0.00	
PHIL	099	Political & Social Thought	4.00	A	16.00	
THEO	051	Modern Hinduism First Honors	3.00	A	12.00	

----------Continued on Next Column----------

Subj	Crs	Title	Crd	Grd	Pts	R
Fall 2018						
CHIN	211	Third Level Chinese I	3.00	A	12.00	
ECON	244	International Finance	3.00	A	12.00	
ENGL	145	19C British Novel	3.00	A	12.00	
GOVT	060	International Relations	3.00	A	12.00	
INAF	109	Theo Aspects of ME Morass First Honors	3.00	A	12.00	

Program Changed to:
Major: International Politics

Subj	Crs	Title	Crd	Grd	Pts	R
Spring 2019						
CHIN	212	Third Level Chinese II	3.00	A	12.00	
ECON	243	International Trade	3.00	A	12.00	
HIST	107	Pacific World	3.00	A	12.00	
INAF	250	Modern Asia:Politics & Society	3.00	A-	11.01	
PHIL	167	Political Philosophy First Honors	3.00	A	12.00	
Fall 2019						
CHIN	311	Integrated Advanced Chinese I	3.00	A	12.00	
GOVT	040	Comparative Political Systems	3.00	A	12.00	
HIST	103	History of Antisemitism	3.00	A	12.00	
INAF	320	Quant Methods:Intrnl Affairs First Honors	3.00	A	12.00	
Spring 2020						

Expanded S/CR/NC grade mode for Spring 2020 due to COVID19 Global Pandemic

King's College London

Modern Europe II: European Society c.1800 to c.2000	3.00	74	
Introduction to Religion and Politics	3.00	72	
The Causes of War	3.00	71	
Territory, State and Nation	3.00	81	
School Total:	12.00		

Subj	Crs	Title	Crd	Grd	Pts	R
Fall 2020						
CHIN	321	Business Chinese	3.00	A	12.00	
GOVT	263	International Law	3.00	A	12.00	
HIST	109	The Islamic World	3.00	A	12.00	
INAF	431	South Asia: Iss of War/ Peace	3.00	A	12.00	

Expanded S/CR/NC grade mode for Fall 2020 due to COVID19 Global Pandemic
First Honors

Annamarie Bianco
Associate Vice President and University Registrar

31-MAY-2022

Record of: Joshua Garrett Metzger
ID: 841183767

GEORGETOWN UNIVERSITY
OFFICE OF THE UNIVERSITY REGISTRAR
WASHINGTON, D.C. 20057
(202)687-4020

Send To: **Joshua Metzger**
Parchment DocumentID: TWSFWVBQ

Subj	Crs	Title	Crd	Grd	Pts	R
Spring 2021						
ANTH	234	Race & Empire	3.00	A	12.00	
ANTH	282	Anthropology of Human Rights	3.00	A	12.00	
CHIN	322	Business Chinese II	3.00	A	12.00	
HIST	226	Hist of Korea in NE Asia	3.00	A	12.00	
INAF	318	Natl ID/Interest in Settler SO	3.00	A	12.00	

Expanded S/CR/NC grade mode for Spring 2021
due to COVID19 Global Pandemic
First Honors

Transcript Totals

	EHrs	QHrs	QPts	GPA
Current	15.00	15.00	60.00	4.000
Cumulative	131.00	100.00	397.00	3.970

End of Undergraduate Record

GEORGETOWN UNIVERSITY • THE REGISTRAR • 1789

Annamarie Bianco
Associate Vice President and University Registrar

GEORGETOWN UNIVERSITY
EXPLANATION OF GRADING SYSTEM
Effective Fall 1993

Undergraduate Grading System

Grade	Quality Points	Description
A	4.00	Superior
A-	3.67	
B+	3.33	
B	3.00	Good
B-	2.67	
C+	2.33	
C	2.00	Average
C-	1.67	
D+	1.33	
D	1.00	Minimum Passing
F	0.00	Failure
W		*Withdrawal
S		*Satisfactory (A,B,C)
CR		*Credit (C-,D,D+)
U		*Unsatisfactory
NC		*No Credit/Unsatisfactory
AU		*Audit
IP		*In Progress
NR		*Grades not yet reported
N		*Incomplete (a temporary grade which must be resolved within a specified time)

Graduate Grading System

Grade	Quality Points	Description
A	4.00	
A-	3.67	
B+	3.33	
B	3.00	
B-	2.67	
C	2.00	
F	0.00	
I		*Incomplete
W		*Withdrawal
S		*Satisfactory
U		*Unsatisfactory
NC		*No Credit/Unsatisfactory
AU		*Audit
IP		*In Progress
NR		*Grades not yet reported

*Not included in the quality hours or Q.P.I.
Grades for courses taken in overseas study programs are recorded as given at the host institution.
"CBL": indicator of Community Based Learning component

In Fall 2009, the McDonough School of Business enacted a grading policy using a recommended rubric for all courses taken in business disciplines. Effective Spring 2019 the policy was changed. The details of the policy can be found in the Undergraduate and Graduate Bulletins, respectively (https://registrar.georgetown.edu/bulletins)

September 1962 - August 1993

Undergraduate Grading System

A	SUPERIOR	F	FAILURE	AU	AUDIT
B	GOOD	W	WITHDRAWAL	IP	IN PROGRESS
C	AVERAGE	S	*SATISFACTORY (A,B,C)	NR	NO GRADE REPORTED
D	PASSING	U	*UNSATISFACTORY		

June 1968 - August 1993

Graduate Grading System

A	EXCELLENT	F	FAILURE	U	*UNSATISFACTORY
B+	SUPERIOR	I	*INCOMPLETE	AU	*AUDIT
B	GOOD	W	*WITHDRAWAL	IP	*IN PROGRESS
C	FAIR	S	*SATISFACTORY	NR	*NO GRADE REPORTED

E in column headed "R" indicates course excluded from Earned Hours and GPA
I in column headed "R" indicates course excluded from Earned Hours only
* NOT INCLUDED IN THE QUALITY HOURS, OR QPI/GPA

June 06, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I am delighted to offer a strong recommendation for a Joshua Metzger who has applied to work as your law clerk. As my research assistant and as a terrific participant in one of my courses, Josh has impressed me as rigorous and open-minded; he also is a crackerjack researcher and writer.

I recruited Josh to work as a research assistant after we met following his admission to the school. I asked him to summarize and analyze scholarship addressing the role of private civil society organizations as building blocks for democratic societies. He produced a thorough and thoughtful research memorandum that has already proved very useful in my ongoing work; I am sure I will return to it repeatedly. Especially given such a broad assignment, I was impressed by his ability to organize and synthesize complex materials and to offer key distinctions and comparisons of both theories and empirical studies. His prose is also a pleasure to read. He brought his research and writing skills also to the Program on International Law and Armed Conflict and in assisting Prof. Noah Feldman's work on incentives to comply with law.

I was delighted when Josh enrolled in my "Nonprofit Organizations and Law" course and his performance in the class was outstanding. The course covers a range of doctrinal issues, including federal tax treatments of nonprofit organizations, First Amendment speech and religion issues with regulation, state laws addressing governance, and international and comparative legal treatments. Josh was an active and helpful participant whose comments in class showed analytic precision and intellectual curiosity. He wrote a first class paper addressing some thorny issues regarding the scope of permissible lobbying and other political activities of 501(c)(4) organizations treated under federal law as tax exempt but donations to them are not tax deductible. The paper provides a subtle reading of the Supreme Court's rulings including Citizens United v. Federal Election Commission; a summary of its apparent effects on independent political expenditures and undisclosed spending. The paper provides rich consideration of tensions between the values of political transparency and freedom of assembly both in Supreme Court jurisprudence and as a public policy matter. I was especially impressed by the paper's articulation and assessment of four legal and policy reforms aimed at limiting the threat of dark money and the paper's attention to both ideals of civic life in democracy and practical issues of enforceability. I have asked Josh if I may share the paper with future classes; it is better than other sources I have seen in she subject. Once again, his talent as a writer and researcher are well on display.

Josh has brought this high level of performance throughout his time at Harvard Law School. It is notable that he earned the highest possible recognition (Dean's Scholars Prize) in each semester of the required Legal Writing course and in his First Amendment course, and I note his strong performance in a wide range of other courses.

Josh has sought out terrific opportunities and deepened his institutional knowledge while refining his legal research and writing in responsible roles. These include an internship with the U.S. Member on the UN International Law Commission in Geneva assisting with the restatement of law on succession of State responsibility, immunity of State officials from foreign criminal jurisdiction, and sea-level rise in relation to international law. He told me that this work helped him sharpened his ability to identify patterns across rules by paying close attention to the consistent use of textual structure measured against other draft articles. He also developed drafting skills in composing model rules and commentaries for the Commission and analyzed potential analogies with provisions in past treaties and state practice. He further worked at the UN Commission on International Trade Law with a focus on implications of cross-border insolvency for new trade provisions. And at the Office of International Affairs of Department of Justice, he wrote memoranda summarizing of factual and procedural histories in six extradition cases, and for each case, assessed probable cause and dual criminality and addressed jurisdictional and limitation obstacles. Josh will soon work in private sector international arbitration and complex litigation teams, and at the World Bank in D.C., working with the Office of Suspension and Debarment on sanctions proceedings for fraud, corruption, and collusion.

On campus, Josh plays key roles with two student edited journals. Selected by his peers to serve as Managing Editor of the Harvard International Law Journal, he is responsible for reviewing submitted articles, curating thematic criteria, and corresponding with authors. He also works as Assistant Managing Editor of the Harvard Human Rights Journal where he sets and manages an editorial schedule as the student editors tackle structural, substantive, and citation revisions. These experiences have drawn in his abilities as a writer and editor and also enhanced his logistical and managerial abilities.

He must be a master of time management for himself as he has also served as the Policy Director of the Harvard Immigration Project. There he oversees many projects including conviction expungement for ineffective counsel in Massachusetts and constructing a database of the efficacy of different states' treatment of individuals with limited English proficiency.

I predict that Josh will build a career combining private practice and public service. He is a deep thinker. He has ably overcome through a norm of civility what could have been permanent ruptures in personal relationships as he moved away from the political worldviews he absorbed from his parents. His historical and open-minded approach to controversies is refreshing and mature. Josh appreciates the intellectual puzzles posed by legal analysis and the further dimensions involved in understanding the stakes of disputes. He is invariably polite, energetic, intellectually curious, and open-minded. It is a genuine pleasure to recommend him highly.

Martha Minow - minow@law.harvard.edu - 617-495-4276

Sincerely,

Martha Minow
300th Anniversary University Professor
Former Dean
Harvard Law School

June 05, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

This is a letter of strong recommendation for Mr. Joshua Metzger, who is applying for a clerkship in your chambers. In this letter, I will describe how I know Mr. Metzger, my sense of his skills as a student, researcher, and writer, and the reasons I think he will make an excellent contribution to chambers.

Mr. Metzger was a student in my Fall 2022 Laws of War course. This is an intensive doctrinal course covering two major subfields of public international law: the law prohibiting the use of force, and international humanitarian law. Students are required to read dense textbooks (one which is targeted to senior practitioners), applied case studies, and case law. As the course progresses, students are asked to apply their doctrinal knowledge to complex dilemmas in contemporary armed conflict, such as the direct participation of civilians in hostilities, the use of force against non-state actors, and the rise of new technologies of war. Mr. Metzger's cohort was unusually advanced: we had a number of LL.M. students who had served as judge advocate generals in the armed forces, as well as several experienced former civil society practitioners. Despite lacking comparable experience or expertise, Mr. Metzger consistently performed excellently. His comments and questions in class were always thoughtful and displayed a close study of the readings, and his performance on the examination (probably the hardest I have administered for this course to date) was outstanding.

I got to know Mr. Metzger and his career ambitions better in several office hours sessions. Unlike most HLS students who feel that they have to choose whether to focus on international law or domestic law, Mr. Metzger is committed to a career of public service that combines a deep understanding of how international law works in actual political institutions (demonstrated in his remarkable range of internships), as well as developing the skills to reflect on how the U.S. government incorporates and interprets international law within its domestic constitutional and statutory system. I wish more students thought about international law this way—seeing it not as a standalone field, but thinking about the ways that one's role as a U.S. government lawyer, or a private practitioner might be enhanced by exposure to international law and legal institutions.

Mr. Metzger's transcript is of course stellar, as was his performance in my course, but I got to see how he thinks through legal challenges and professional tasks in my role as his independent clinical supervisor for his recently completed externship for the Department of Justice's Office of International Affairs. Students are required to submit weekly reflections to their supervisors, and many submit very brief summaries of their work that week. Not Mr. Metzger. I found myself looking forward to his submissions every week, as he narrated the way he was tackling his research tasks, thinking through drafting his assignments, and reflecting on how his experiences in OIA connected to his coursework in public international law. I felt like I was reading in real-time as a bright and curious intellect grappled with becoming a professional legal adviser. His writing struck me as careful, rigorous, and also deeply concerned about the ethics and implications of government legal practice. Mr. Metzger takes the privilege and responsibility of public service seriously, and strikes me as someone who will always be deeply thoughtful about what is "right" in a moral sense as well as a doctrinal one.

For these reasons, I believe Mr. Metzger will make a wonderful contribution to chambers. He is a serious thinker, a rigorous researcher and writer, and someone who believes deeply in the role of law and legal institutions in democratic life. Please do not hesitate to let me know if you have further questions or require additional information.

Sincerely,

Naz Khatoon Modirzadeh
Professor of Practice
Director, Harvard Law School Program on International Law and Armed Conflict

Naz Modirzadeh - nmodirzadeh@law.harvard.edu - 617-495-1066

May 30, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I understand that Josh Metzger is applying for a clerkship in your chambers. I write this letter in strong support of his application.

Josh assisted me during the summer of 2022 in Geneva for my work as a Member of the U.N. International Law Commission (ILC), to which I was elected by the U.N. General Assembly after nomination by the U.S. Department of State. Although he is a student at Harvard Law School (and thus not at my home institution), Josh approached me in early 2022 to see if I could use his assistance. After reviewing his background and conducting a Zoom interview, I asked him to join me in Geneva for the 73rd session of the ILC.

Josh's attendance at the ILC for nine weeks of the session provided him with a unique opportunity to observe the Commission's work in codifying and progressively developing international law. This included observing the ILC's plenary sessions, drafting committees, and study group meetings. Among the topics addressed at those meetings were: immunity of State officials from foreign criminal jurisdiction; succession of States in respect of State responsibility; peremptory norms of general international law (jus cogens); protection of the environment in relation to armed conflicts; general principles of law; and sea-level rise in relation to international law.

In addition to observing such meetings, Josh helped prepare remarks for my interventions in the study group on sea-level rise, making adept use of the views presented in the co-chair's second issues paper. By way of example, he considered thoughtfully competing perspectives surrounding conceptions of statehood, which entailed parsing treaties (such as the Montevideo Convention), State practice (such as relating to the Holy See and the Sovereign Order of Malta), past ILC practice, and secondary sources (such as James Crawford's treatise on the creation of States).

Moreover, Josh took the initiative of preparing a 20-page memorandum discussing the difficult issue of whether general principles of law (within the meaning of Article 38(1)(c) of the ICJ's Statute) can be formed not just within national legal systems, but also within the international legal system itself. In that regard, he probed cases decided by the ICJ and International Criminal Tribunal for the former Yugoslavia, yearbooks of international law, and law review articles. He even composed his own draft language for black-letter text on this issue and for an accompanying commentary, which proved useful when thinking through the ILC's work for what is now draft Conclusion 7 (and its commentary) on General Principles of Law.

Towards the end of the session, we had to review paragraph-by-paragraph the ILC's draft annual report. Josh was of great assistance in reading and suggesting edits for the report on matters of substance, style, spelling, and grammar. We paid particular attention to the accuracy of the report in relation to U.S. law, such as when analyzing the Torture Victim Protection Act or the Foreign Sovereign Immunities Act.

In all respects, Josh was a highly capable assistant: smart; inquisitive; congenial; timely; and attentive to detail. He learned a lot from his time in Geneva about law in practice, setting himself up well for pursuit of his legal career. I have no doubt that serving as clerk in your chambers would be an excellent next step, both for him and for your work.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Sean D. Murphy
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WRITING SAMPLE

Drafted Spring 2023

The attached is a final paper I wrote for Judge Halligan's Harvard Law School course Federalism and States as Public Law Actors. It addresses whether the rise of nationwide injunctions is a welcome development in relation to federalism as a matter of law and policy. I performed all research, writing, and editing for the assignment.

Nationwide Injunctions in the Evolution of Federalism

I. Introduction

Whether issued by one judge "sitting on an island in the Pacific"[1] to block a travel ban or another "in a small courthouse in Amarillo, Texas,"[2] to suspend the sale of an abortion pill, nationwide injunctions have been widely scrutinized for their extraordinary power.[3] Conceivably, any one of the nearly 700 sitting federal district court judges can, at least temporarily, dictate national policy on issues as contentious as immigration or reproductive rights. Combined with a coarsening of political divisions[4] and willingness of some judges to wade into divisive moral debates, vindicating rights increasingly looks to the sweeping, one-size-fits-all solution that nationwide injunctions offer.[5] The issue grows especially thorny when states, as opposed to private plaintiffs, take advantage of relaxed standing requirements and assert their "extreme rights."[6] In such circumstances, nationwide injunctions may infer "a policy judgment" about how powers should be allocated among the three branches—and two tiers—of our government.[7]

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[1] Charlie Savage, *Jeff Sessions Dismisses Hawaii as 'an Island in the Pacific,'* N.Y. TIMES (Apr. 20, 2017), https://www.nytimes.com/2017/04/20/us/politics/jeff-sessions-judge-hawaii-pacific-island.html.
[2] Nicholas Bagley, *A Single Judge Shouldn't Have This Kind of National Power*, THE ATLANTIC (Apr. 17, 2023), https://www.theatlantic.com/ideas/archive/2023/04/mifepristone-case-problem-federal-judiciary/673724/.
[3] *See* Allan M. Trammell, *Demystifying Nationwide Injunctions*, 98 TEX. L. REV. 67, 70 (2019) (mentioning the contention of some that "[t]his power, vested in a single lower court, is profound[,] discomfiting, and . . . never appropriate.").
[4] *See* Ronald A. Cass, *Nationwide Injunctions' Governance Problems: Forum Shopping, Politicizing Courts, and Eroding Constitutional Structure*, 27 GEO. MASON L. REV. 29, 35 (2019). For instance, before the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022), Texas' scheme to insulate its law from the fundamental protections of *Roe v. Wade*, 410 U.S. 113 (1973), was cited by California Governor Gavin Newsom as reason to invent a private right of action "against anyone who manufactures, distributes, or sells an assault weapon or ghost gun kit or parts in the State of California." Press Release, Office of Governor Gavin Newsom, Governor Newsom Statement on Supreme Court Decision (Dec. 11, 2021), https://www.gov.ca.gov/2021/12/11/governor-newsom-statement-on-supreme-court-decision/.
[5] *See, e.g.*, Memorandum from the Att'y Gen. to Heads of Civil Litigating Components and U.S. Att'ys, on Litigation Guidelines for Cases Presenting the Possibility for Nationwide Injunctions, at 3 (Sept. 13, 2018) (on file with the Department of Justice).
[6] *See* Georgia v. Tenn. Copper Co., 206 U.S. 230, 239 (1907) ("Whether Georgia by insisting upon this claim is doing more harm than good to her own citizens *is for her to determine*. The possible disaster to those outside the State must be accepted as a consequence of her standing upon her extreme rights.").
[7] Trump v. Hawaii, 138 S. Ct. 2392, 2429 (2018) (Thomas, J., concurring).

Accordingly, nationwide injunctions appear to bear out Alexander Hamilton's prescient judgment that "it will always be far more easy for the State governments to encroach upon the national authorities than for the national government to encroach upon the State authorities."[8] Yet, the object of this paper is to analyze whether these exceptional equitable remedies represent a perfection rather than a perversion of federalism. First, I will illustrate the tendencies that give rise to totalizing political debates and how they map onto federalism and nationalism. Second, I will discuss how nationwide injunctions fit into the mosaic of public law litigation tools available to states. Finally, I will touch briefly on strategies to partially neutralize the drawbacks of nationwide injunctions before concluding with a reflection on the primacy of state actors in locating and articulating plural visions for democracy.

II. Totalizing Politics in Law

Nationwide injunctions mirror the centripetal movement of issues toward nationalization and away from local control. In effect, these injunctions extend their rulings not only to the parties before them, but also across the whole country, thus enabling the winning party's narrow view to earn recognition as the law of the land.[9] Lower-level contestation is decisively settled, at least temporarily, as one side comes to nationalize its position, undermine regional resistance, and impose its moral instincts on the opposition.[10] Arguably then, what results is a deviation from the first principles of federalism, namely that the electorate may accept beliefs in its political subunit

[8] THE FEDERALIST No. 17 (Alexander Hamilton). In comparison, Alexis de Tocqueville speculated that passions most fatal to republican institutions increase with expanding territory, yet under the "most perfect federal constitution that ever existed," the United States had divined a way to grow in geography and power without succumbing to these misfortunes because federalism had preserved local virtues. Candace H. Beckett, *Separation of Powers and Federalism: Their Impact on Individual Liberty and the Functioning of Our Government*, 29 WM. & MARY L. REV. 635, 645 (1988) (quoting ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 160 (Phillips Bradley ed., 1945)).
[9] *See* Samuel Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 HARV. L. REV. 417, 424 (2017).
[10] *See* Gillian E. Metzger, *The States as National Agents*, 59 ST. LOUIS U. L. J. 1071, 1073 (2015); *see generally* CASS R. SUNSTEIN, GOING TO EXTREMES: HOW LIKE MINDS UNITE AND DIVIDE (2011). Upon the issuance of a nationwide injunction, the losing party can appeal for a stay of the order. This process may culminate in an "emergency" order from the Supreme Court's "shadow docket." *See* Mark A. Lemley*, The Imperial Supreme Court*, 136 HARV. L. REV. 97, 106 (2022).

that differ from those at the national level.[11] To a degree, gone too is a safety valve allowing citizens who feel alienated from the federal government to turn "to the states and know there are government institutions controlled by their 'team.'"[12]

However, this account fits into a stylized conception of federalism and its benefits. To be sure, it is fair to question whether states acting on their autonomy should be criticized as impediments to welfare maximization or dignified as "laboratories" for policy experimentation.[13] On the one hand, the rule of law is threatened if each state government enjoys the interpretive freedom to disregard higher sources of authority. Such discretion risks making every locality a law unto itself.[14] On the other hand, extinguishing options for states to "dissent by deciding" removes a key platform for advocacy and disrupts critical agenda setting tactics.[15] Colorado and Washington's legalization of recreational marijuana and Arizona's enactment of strict immigration laws represent examples of states using their sovereign status to set unique terms of governance.[16] These clashing views inhere in the dispute over nationwide injunctions.

III. Nationwide Injunctions' Inevitable Rise

Opponents allege that nationwide injunctions stifle percolation of legal questions at the local level[17] and inflame issues into "winner-take-all" conflicts.[18] Meanwhile, proponents insist

[11] *See, e.g.*, MALCOLM FEELEY & EDWARD RUBIN, FEDERALISM: POLITICAL IDENTITY AND TRAGIC COMPROMISE 38-68 (2008).
[12] Jessica Bulman-Pozen, *From Sovereignty and Process to Administration and Politics: The Afterlife of American Federalism*, 123 YALE L.J. 1920, 1950 (2014).
[13] New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) ("It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory.").
[14] *See* Reynolds v. United States, 98 U.S. 145, 167 (1878).
[15] Heather K. Gerken, *Dissenting by Deciding*, 57 STAN. L. REV. 1745, 1754-59 (2005).
[16] *See* Heather K. Gerken, *The Loyal Opposition*, 123 YALE L.J. 1958, 1979 (2014); Bulman-Pozen, *supra* note 12, at 1932-33 (describing states as "staging grounds for national networks"); Jessica Bulman-Pozen & Heather K. Gerken, *Uncooperative Federalism*, 118 YALE L.J. 1256, 1271-74 (2009).
[17] United States v. Mendoza, 464 U.S. 154, 160 (1984) ("Allowing only one final adjudication would deprive this Court of the benefit it receives from permitting several courts of appeals to explore a difficult question before this Court grants certiorari.").
[18] JAMES BURNS, THE VINEYARD OF LIBERTY 598 (1981); *see also* Goodwin Liu, *State Courts and Constitutional Structure*, 128 YALE L.J. 1304, 1314 (2019).

that such remedies augment, rather than invert, the federalist structure. On balance, proponents present a more compelling argument insofar as they show the rise of nationwide injunctions to comprise a predictable next step in the advancement of national policy through decentralization.

A. Opponents: "A threat to our constitutional order"[19]

While federalism relies on decentralization to lend greater visibility to dissenters' views, nationwide injunctions' pronouncement of a uniform policy for the entire country denies oppositional groups the possibility to find real-world instantiations of their ideas. What precisely makes nationwide injunctions sought by state plaintiffs so unsettling is that states are using the grammar of federalism to undermine its larger structure. Put differently, it is one thing for a state to seek to enjoin implementation of a federal initiative vis-à-vis itself. After all, a polity as wide and diverse as the United States is unlikely to agree on one right answer to questions of vigorous public debate.[20] Yet, it is another thing entirely for one or several states, in the face of horizontal conflict on the propriety of a federal law, to sue and have the associated regulatory regime set aside for the entire country.[21] Indeed, a state can seize the machinery of our decentralized system and impose a national vision without having to spend any of the political capital to get its way.[22] Attempts to frame nationwide injunctions as merely building on the existing order understate the weaponization of a new judicial tool and mislead with respect to the breadth of their impact.

When one state, or a small class of similarly situated ones, pursue nationwide injunctions, reliance on "special solicitude"[23] may be inadequate to cure the injuries to other actors. First, states

[19] Jeff Sessions, *Nationwide Injunctions Are a Threat to Our Constitutional Order*, Nat'l Rev. (Mar. 10, 2018), https://www.nationalreview.com/2018/03/nationwide-injunctions-stop-elected-branches-enforcing-law/.
[20] *See* Goodwin Liu, *State Constitutions and the Protection of Individual Rights: A Reappraisal*, 92 N.Y.U. L. Rev. 1307, 1335 (2017).
[21] *See* Bradford Mank & Michael E. Solimine, *State Standing and National Injunctions*, 94 Notre Dame L. Rev. 1955, 1972 (2019).
[22] *See* Heather K. Gerken, *Federalism 3.0*, 105 Cal. L. Rev. 1695, 1722 (2017).
[23] Massachusetts v. EPA, 549 U.S. 497, 520 (2007).

can exploit asymmetric litigation prospects to freeze federal regulations. While agencies face long odds of "parlaying a 94-to-0 win in the district courts into a 12-to-0 victory in the courts of appeal," a state plaintiff need only secure a single victory to invalidate a disfavored policy—potentially indefinitely.[24] Worse still, the small hurdle of identifying a single judge to endorse one's position raises the appeal of forum shopping, spelling near certain defeat for the federal government.[25] Second, standing cannot be "dispensed in gross."[26] Although special solicitude depends, in part, on a state's *parens patriae* authority, it cannot stretch so far as to permit that state to stand-in as proxy for other states' citizens as well. Even in attaining a ruling that would align with the political preferences of nonparty states, part of a litigation right is deciding when *not* to sue. Alternatively, states may attempt to pursue conciliatory means or negotiate politically with an enforcement agency instead of resorting to litigation. However, nationwide injunctions necessarily leverage the rights of such dissenting nonparties without the chance to opt out.[27]

B. Proponents: "[T]he old sense of equitable remedies as extraordinary has faded"[28]

In contrast, nationwide injunctions may not represent an aberration in states' ability to make national policy but instead fit into a broader reconceptualization of federalism's "afterlife."[29] Rather than imagine states as isolated units whose policies are bound by their borders, states' contemporary relevance is most saliently observed in their ability to challenge federal policies on ideological lines.[30] In this way, states have moved beyond shaping *how* federal law is made and now look to authoritatively determinate *what* that law is.[31]

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[24] Dep't of Homeland Sec. v. New York, 140 S. Ct. 599, 601 (2020) (Gorsuch, J., concurring in the grant of stay).
[25] *See* Mank & Solimine, *supra* note 21, at 1964.
[26] Gill v. Whitford, 138 S. Ct. 1916, 1934 (2018) (quoting DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 353 (2006)).
[27] Michael T. Morley, *De Facto Class Actions? Plaintiff- and Defendant-Oriented Injunctions in Voting Rights, Election Law, and Other Constitutional Cases*, 39 HARV. J.L. & PUB. POL'Y 487, 522-23 (2016).
[28] Abram Chayes, *The Role of the Judge in Public Law Litigation*, 89 HARV. L. REV. 1281, 1292 (1976).
[29] Bulman-Pozen, *supra* note 12, at 1950 (2014).
[30] *See id.*
[31] *See* Ernest A. Young, *Two Cheers for Process Federalism*, 46 VILL. L. REV. 1349, 1364 (2001).

Indeed, states may be pursuing the same end of controlling national policy but merely through different means. For instance, *Massachusetts v. EPA*[32] was no different in pitting the views of one group of states,[33] who believed the EPA should regulate greenhouse gases under the Clean Air Act, against another group that thought otherwise,[34] with each "trying to make policy for the whole country."[35] A related point warrants particular emphasis: While vertical federalism is bipartisan in the sense that interest conflicts will tilt in a liberal or conservative direction depending on the given situation,[36] horizontal federalism centers on a dispute over the uniform federal rule, and therefore is far more likely to bear a clear political valence.[37] Nationwide injunctions respect that horizontal federalism, involving conflict among states over the content of national governance, not just carving out space for state policy diversity.[38]

Similarly, states have long taken advantage of local laws to establish what is effectively a nationwide regulatory regime.[39] Rarely does an otherwise assertive state decline to enact a desired policy for fear of producing impermissible extraterritorial effects.[40] In *National Pork Producers v. Ross*,[41] the meat industry challenged California's Proposition 12 barring the sale of pork from sows kept in excessively small enclosures on the grounds that the law sought to "govern sow housing generally, not just for out-of-state pigs destined for the (very large) California market."[42] Still,

[32] 549 U.S. 497 (2007).
[33] *Id.* at 505 n.2 (listing California, Connecticut, Illinois, Maine, Massachusetts, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington).
[34] *Id.* at 505 n.5 (listing Alaska, Idaho, Kansas, Michigan, Nebraska, North Dakota, Ohio, South Dakota, Texas, and Utah).
[35] Margaret H. Lemos & Ernest A. Young, *State Public-Law Litigation in an Age of Polarization*, 97 TEX. L. REV. 43, 97 (2018).
[36] *See, e.g.*, Ilya Somin, *Federalism and the Roberts Court*, 46 PUBLIUS: J. FEDERALISM 441, 452-55 (2016).
[37] *See id.* at 97-98.
[38] *See* Lemos & Young, *supra* note 35, at 96-97.
[39] *See id.*
[40] *See* Am. Beverage Ass'n v. Snyder, 735 F.3d 362, 379 (6th Cir. 2013) (Sutton, J., concurring) (The "reality is that the States frequently regulate activities that occur entirely within one State but that have effects in many.").
[41] No. 21-468 (U.S. argued Oct. 11, 2022).
[42] Brief for Petitioners at 19, Nat'l Pork Producers v. Ross, 142 S. Ct. 1413 (2022) (No. 21-468).

California rejected both the accusation that the welfare of farm animals in other states was the proper concern of the governments where those animals are housed, and that it was exercising disproportionate influence on production methods located almost entirely beyond its borders. Likewise, states have pursued lawmaking on issues where the action of a single state can intrude on the entitlement of all others to regulate. Take broadband services. Because it is "impossible to separate" interstate traffic from intrastate traffic,[43] internet service providers (ISPs) are unable to comply with local rules without applying the same standard to national operations.[44] Especially where the federal government has selected a *deregulatory* regime, states have viewed it as their responsibility to address the subsequent protection vacuum, even if their responses transcend state boundaries.[45] Unilateral action, in this respect, has resembled a quasi-nationwide injunction. Therefore, taking the step of formalizing the mechanism to meet the same longstanding motive should not make the practice any more objectionable.

Stemming from this perspective, states' special solicitude supporting their access to courts as a public, responsive, and relatively level playing field should remain unthreatened.[46] First, dependence on the "litigation safeguards of federalism" stands as states' best corrective to the faltering of political safeguards.[47] In contrast to the arguments put forth by process theorists,[48] Congress passes statutes for reasons numerous and arcane, and yet preservation of state interests

[43] Minnesota Pub. Utilities Comm'n. v. F.C.C., 483 F.3d 570, 577 (8th Cir. 2007).
[44] *See* New York State Telecommunications Ass'n, Inc. v. James, 544 F. Supp. 3d 269, 285 (E.D.N.Y. 2021) (finding New York's contention that its Affordable Broadband Act (ABA) is "purely intrastate" is "counterintuitive, if not implausible").
[45] *See* Matthew Bultman, *States Lead Crypto Enforcement as Feds Deal with Inchoate Role*, BLOOMBERG L. (Nov. 28, 2022), https://news.bloomberglaw.com/securities-law/states-lead-crypto-enforcement-as-feds-deal-with-inchoate-role (discussing state attorneys general offices' lack of confidence in SEC cryptocurrency enforcement); *see also* Justin Weinstein-Tull, *Abdication and Federalism*, 117 COLUM. L. REV. 839 (2017).
[46] Lemos & Young, *supra* note 35, at 118.
[47] *Id.* at 117-19.
[48] *See, e.g.*, Larry D. Kramer, *Putting the Politics Back into the Political Safeguards of Federalism*, 100 COLUM. L. REV. 215, 220-33 (2000).

is far down the list.[49] Nationwide injunctions measurably account for that deficiency. Second, enjoyment of special solicitude need only bear on blocking widespread harms to states' sovereign interests, such that taking notice of a broader set of effects on judicial process impermissibly expands the scope of the relevant inquiry. Even so, it would be "inconceivable" for a sovereign state to bring a class action to vindicate its institutional rights.[50] Focus should thus be narrowed to authorizing enjoinment wide enough to afford complete relief, granted that it may require a uniform policy.[51]

Moreover, it may be misleading to depict nationwide injunctions as an opportunity for one state to compel the rest of the country to accept its preferred legal solution. Specifically, that objection embellishes the magnitude of "overriding" that results. This is because there is rarely on the table 51 unique proposals to address a given problem but rather only two: one red, one blue.[52] Accordingly, despite roughly half the country finding fault with the consequences flowing from a state's disproportionate equitable remedy, the other half will be quick to celebrate it. The two litigants favoring and disfavoring enjoinment represent the larger national debate's opposing sides—that is, Republicans and Democrats. Percolation, in such event, does little to facilitate the expression of competing views[53] or help courts calibrate the scope of certain rights, since the binary "universe" of possible arguments is presented before the district judge, albeit reductively.[54] Further reducing concerns, a case that intimates the issuance of a nationwide injunction attracts

[49] *See* Mank & Solimine, *supra* note 21, at 1970.
[50] Brief for the States of New York et al. at 35, Trump v. Hawaii, 138 S. Ct. 2392 (2018) (No. 17-965).
[51] *See, e.g.*, Emergency Application for Stay Pending Certiorari at 39, Arizona v. Mayorkas, 598 U. S. ____ (2022) (No. 22–592).
[52] *But see* JEFFREY SUTTON, 51 IMPERFECT SOLUTIONS: STATES AND THE MAKING OF AMERICAN CONSTITUTIONAL LAW (2018).
[53] *See* Dep't of Homeland Sec. v. New York, 140 S. Ct. 599, 600 (2020) (Gorsuch, J., concurring in the grant of stay).
[54] *See, e.g.*, Michael Coenen & Seth Davis, *Percolation's Value*, 73 STAN. L. REV. 363 (2021).

the participation of interested interveners and amici, in effect providing an "airing of the issue that substitutes for the opportunity of numerous lower courts to examine the issue."[55]

In short, nationwide injunctions fit comfortably within the wider mosaic of legal tools enhancing states' capability to advance national policy. Possibly in response to their own electorate's heightened focus on matters of national import,[56] state attorneys general have been more inclined to instrumentalize these tools,[57] exemplified by teaming up with other states to conclude a Master Settlement Agreement with major tobacco companies, [58] demanding information on user privacy protections from tech giants,[59] or invalidating EPA regulations by invoking the major questions doctrine.[60] Doubtless, states are increasingly active participants in national political life, without the permission or direction of the central government.

IV. Conclusion

While the reservation of critics about nationwide injunctions' susceptibility for abuse is credible, advocating for prohibition of the remedy goes a step too far. Instead, nationwide injunctions merely call for the same "rules of engagement" that have long failed to define federal-state relations writ large.[61] First, additional restrictions should insist on exceptional circumstances to trigger exceptional relief.[62] Naturally, the stronger the injury, the more appropriate a nationwide

[55] Zachary D. Clopton, *National Injunctions and Preclusion*, 118 MICH. L. REV. 1, 37-38 (2019).
[56] *See* David Schleicher, *Federalism and State Democracy*, 95 TEX. L. REV. 763, 768 (2017).
[57] Then-Texas Attorney General Greg Abbott once described a typical workday as, "I go into the office, I sue the federal government and I go home." Sue Owen, *Greg Abbott Says He Has Sued Obama Administration 25 Times*, POLITIFACT (May 10, 2013), https://www.politifact.com/factchecks/2013/may/10/greg-abbott/greg-abbott-says-he-has-sued-obama-administration-/.
[58] *See* National Association of Attorneys General, *Master Settlement Agreement* (1998), https://www.naag.org/assets/redesign/files/msa-tobacco/MSA.pdf.
[59] Letter from National Association of Attorneys General to Mark Zuckerberg, CEO, Facebook, Inc. (Mar. 26, 2018).
[60] *See* W. Virginia v. Env't Prot. Agency, 142 S. Ct. 2587, 2609-16 (2022).
[61] *See* Heather K. Gerken, *Federalism and Nationalism: Time for a Detente?*, 59 ST. LOUIS U. L.J. 997, 1029 (2015).
[62] This would effectively dismiss applications that rely on "downstream" or "indirect" economic effects. *See, e.g.*, Brief for Respondents at 41, Arizona v. Mayorkas, 598 U. S. ____ (2022) (No. 22–592).